

(Rept. No. 1054). Referred to the House Calendar.

Mr. NATCHER: Committee of conference. H.R. 7431. A bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1964, and for other purposes (Rept. No. 1055). Ordered to be printed.

Mr. ROONEY of New York: Committee of conference. H.R. 7063. A bill making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1964, and for other purposes (Rept. No. 1056). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LIBONATI: Committee on the Judiciary. H.R. 4361. A bill for the relief of the estate of Paul F. Ridge; with amendment (Rept. No. 1047). Referred to the Committee of the Whole House.

Mr. LIBONATI: Committee on the Judiciary. H.R. 4972. A bill for the relief of Robert E. McKee General Contractor, Inc., and Kaufman & Broad Building Co., a joint venture; with amendment (Rept. No. 1048). Referred to the Committee of the Whole House.

Mr. ASHMORE: Committee on the Judiciary. H.R. 6748. A bill for the relief of the J. D. Wallace & Co., Inc.; without amendment (Rept. No. 1049). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GRABOWSKI:
H.R. 9510. A bill to provide for the coinage of 50-cent pieces bearing the likeness of John Fitzgerald Kennedy; to the Committee on Banking and Currency.

By Mr. PATTEN:
H.R. 9511. A bill to suspend for a temporary period the import duty on polyethyleneimine; to the Committee on Ways and Means.

By Mr. RHODES of Arizona:
H.R. 9512. A bill to amend the Federal Food, Drug, and Cosmetic Act so as to make that act applicable to smoking products; to the Committee on Interstate and Foreign Commerce.

H.R. 9513. A bill to establish the calendar year as the fiscal year of the Government, and for other purposes; to the Committee on Government Operations.

By Mr. FASCELL:
H.J. Res. 877. Joint resolution providing for a world conference on oceanography to be convened in the United States in 1965; to the Committee on Foreign Affairs.

By Mr. PUCINSKI:
H.J. Res. 878. Joint resolution authorizing and directing the National Institutes of Health to undertake a fair, impartial, and controlled test of Krebiozen; and directing the Food and Drug Administration to withhold action on any new drug application before it on Krebiozen until the completion of such test; and authorizing to be appropriated to the Department of Health, Education, and Welfare the sum of \$250,000; to the Committee on Interstate and Foreign Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. POWELL introduced a bill (H.R. 9514) for the relief of Athanassia Eleni, which was referred to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

537. By the SPEAKER: Petition of Henry Stoner, Avon Park, Fla., relative to the election and succession of the President and Vice President as provided in the Constitution of the United States; to the Committee on the Judiciary.

538. Also, petition of Henry Stoner, Avon Park, Fla., relative to maintaining a truly honorable States rights under the Constitution of the United States; to the Committee on the Judiciary.

539. Also, petition of Henry Stoner, Avon Park, Fla., requesting passage of House Joint Resolution 789, to adopt a specific version of the Star Spangled Banner; to the Committee on the Judiciary.

SENATE

TUESDAY, DECEMBER 17, 1963

The Senate met at 12 o'clock meridian, and was called to order by Hon. GEORGE D. AIKEN, a Senator from the State of Vermont.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

O Thou who art the eternal source of the love that came down at Christmas, help us to see that the heart of what the world is celebrating these festive days is the opposite of most of this generation's priorities in the busy rush for success. Give us to comprehend the magnificent irony of His coming, with its reversals of the standards of men—that right past wealth and purple pomp and priestly pride, scorning kings and rulers and unworthy religious leaders, past church, past state, past throne and altars, the true word of God made flesh, compelling and revolutionary, came to the lowly manger, for there was no room in the busy inn.

Open our eyes to see that still today, as unpredictable as the Bethlehem inn, again and again the hands and feet and lips of Thy deepest purpose for the world are housed in some human life, and that when—

They all were looking for a king
To raise their hopes and lift them high—
He came, a little baby thing
That made a woman cry!

So may we thrill once more, as the silver trumpets of Christmas are heard, as with contrite hearts we confess—

I know not how that Bethlehem's Babe
Could in the Godhead be;
I only know the manger Child
Has brought God's life to me.

In that Holy Child's blessed name we pray. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
ACTING PRESIDENT PRO TEMPORE,
Washington, D.C., December 17, 1963.
To the Senate:

Being temporarily absent from the Senate, I appoint Hon. GEORGE D. AIKEN, a Senator from the State of Vermont, to perform the duties of the Chair during my absence.

LEE METCALF,
Acting President pro tempore.

Mr. AIKEN thereupon took the chair as Acting President pro tempore.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Monday, December 16, 1963, was dispensed with.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Miller, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill (H.R. 9499) making appropriations for foreign aid and related agencies for the fiscal year ending June 30, 1964, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 9499) making appropriations for foreign aid and related agencies for the fiscal year ending June 30, 1964, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

EXECUTIVE SESSION

The Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

CONVENTION WITH MEXICO FOR SOLUTION OF PROBLEM OF THE CHAMIZAL

The ACTING PRESIDENT pro tempore. The Senate, under its order of yesterday, will now proceed to consider, in executive session, the Chamizal convention with Mexico, under a limitation of 2 hours of debate.

The Senate, as in Committee of the Whole, proceeded to the consideration of Executive N, 88th Congress, 1st session, the convention, Executive N (88th Cong., 1st sess.), a convention with Mexico for solution of the problem of the Chamizal, signed at Mexico City on August 29, 1963, which was read the second time, as follows:

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES FOR THE SOLUTION OF THE PROBLEM OF THE CHAMIZAL

The United States of America and the United Mexican States:

Animated by the spirit of good neighborliness which has made possible the amicable solution of various problems which have arisen between them;

Desiring to arrive at a complete solution of the problem concerning El Chamizal, an area of land situated to the north of the Rio Grande, in the El Paso-Ciudad Juarez region;

Considering that the recommendations of the Department of State of the United States and the Ministry of Foreign Relations of Mexico of July 17, 1963, have been approved by the Presidents of the two Republics;

Desiring to give effect to the 1911 arbitration award in today's circumstances and in keeping with the joint communique of the Presidents of the United States and of Mexico issued on June 30, 1962; and

Convinced of the need for continuing the program of rectification and stabilization of the Rio Grande which has been carried out under the terms of the Convention of February 1, 1933, by improving the channel in the El Paso-Ciudad Juarez region,

Have resolved to conclude a Convention and for this purpose have named as their Plenipotentiaries:

The President of the United States of America, Thomas C. Mann, Ambassador of the United States of America to Mexico, and The President of the United Mexican States, Manuel Tello, Secretary for Foreign Relations.

Who, having communicated to each other their respective Full Powers, found to be in good and due form, have agreed as follows:

ARTICLE 1

In the El Paso-Ciudad Juarez sector, the Rio Grande shall be relocated into a new channel in accordance with the engineering plan recommended in Minute No. 214 of the International Boundary and Water Commission, United States and Mexico. Authentic copies of the Minute and of the map attached thereto, on which the new channel is shown, are annexed to this Convention and made a part hereof.

ARTICLE 2

The river channel shall be relocated so as to transfer from the north to the south of the Rio Grande a tract of 823.50 acres composed of 366.00 acres in the Chamizal tract, 193.16 acres in the southern part of Cordova Island, and 264.34 acres to the east of Cordova Island. A tract of 193.16 acres in the northern part of Cordova Island will remain to the north of the river.

ARTICLE 3

The center line of the new river channel shall be the international boundary. The lands that, as a result of the relocation of the river channel, shall be to the north of the center line of the new channel shall be the territory of the United States of America and the lands that shall be to the south of the center line of the new channel shall be the territory of the United Mexican States.

ARTICLE 4

No payments will be made, as between the two Governments, for the value of the lands that pass from one country to the other

as a result of the relocation of the international boundary. The lands that, upon relocation of the international boundary, pass from one country to the other shall pass to the respective Governments in absolute ownership, free of any private titles or encumbrances of any kind.

ARTICLE 5

The Government of Mexico shall convey to the Banco Nacional Hipotecario Urbano y de Obras Públicas, S.A., titles to the properties comprised of the structures which pass intact to Mexico and the lands on which they stand. The Bank shall pay the Government of Mexico for the value of the lands on which such structures are situated and the Government of the United States for the estimated value to Mexico of the said structures.

ARTICLE 6

After this Convention has entered into force and the necessary legislation has been enacted for carrying it out, the two Governments shall, on the basis of a recommendation by the International Boundary and Water Commission, determine the period of time appropriate for the Government of the United States to complete the following:

(a) The acquisition, in conformity with its laws, of the lands to be transferred to Mexico and for the rights of way for that portion of the new river channel in the territory of the United States;

(b) The orderly evacuation of the occupants of the lands referred to in paragraph (a).

ARTICLE 7

As soon as the operations provided in the preceding article have been completed, and the payment made by the Banco Nacional Hipotecario Urbano y de Obras Públicas, S.A., to the Government of the United States as provided in Article 5, the Government of the United States shall so inform the Government of Mexico. The International Boundary and Water Commission shall then proceed to demarcate the new international boundary, recording the demarcation in a Minute. The relocation of the international boundary and the transfer of lands provided for in this Convention shall take place upon express approval of that Minute by both Governments in accordance with the procedure established in the second paragraph of Article 25 of the Treaty of February 3, 1944.

ARTICLE 8

The costs of constructing the new river channel shall be borne in equal parts by the two Governments. However, each Government shall bear the costs of compensation for the value of the structures or improvements which must be destroyed, within the territory under its jurisdiction prior to the relocation of the international boundary, in the process of constructing the new channel.

ARTICLE 9

The International Boundary and Water Commission is charged with the relocation of the river channel, the construction of the bridges herein provided for, and the maintenance, preservation and improvement of the new channel. The Commission's jurisdiction and responsibilities, set forth in Article XI of the 1933 Convention for the maintenance and preservation of the Rio Grande Rectification Project, are extended upstream from that part of the river included in the Project to the point where the Rio Grande meets the land boundary between the two countries.

ARTICLE 10

The six existing bridges shall, as a part of the relocation of the river channel, be replaced by new bridges. The cost of constructing the new bridges shall be borne in equal parts by the two Governments. The

bridges which replace those on Stanton-Lerdo and Santa Fe-Juarez streets shall be located on the same streets. The location of the bridge or bridges which replace the two Cordova Island bridges shall be determined by the International Boundary and Water Commission. The agreements now in force which relate to the four existing bridges between El Paso and Ciudad Juarez shall apply to the new international bridges which replace them. The international bridge or bridges which replace the two Cordova Island bridges shall be toll free unless both Governments agree to the contrary.

ARTICLE 11

The relocation of the international boundary and the transfer of portions of territory resulting therefrom shall not affect in any way:

(a) The legal status, with respect to citizenship laws, of those persons who are present or former residents of the portions of territory transferred;

(b) The jurisdiction over legal proceedings of either a civil or criminal character which are pending at the time of, or which were decided prior to, such relocation;

(c) The jurisdiction over acts or omissions occurring within or with respect to the said portions of territory prior to their transfer;

(d) The law or laws applicable to the acts or omissions referred to in paragraph (c).

ARTICLE 12

The present Convention shall be ratified and the instruments of ratification shall be exchanged at Mexico City as soon as possible. The present Convention shall enter into force upon the exchange of instruments of ratification.

Done at Mexico City the twenty-ninth day of August, nineteen sixty three, in the English and Spanish languages, each text being equally authentic.

For the Government of the United States of America,

[SEAL]

THOMAS C. MANN.

For the Government of the United Mexican States,

[SEAL]

MANUEL TELLO.

NOMINATIONS IN THE FOREIGN SERVICE

Mr. MANSFIELD. Mr. President, I yield myself one-half a minute, in which I call up the nominations on the Executive Calendar.

The PRESIDING OFFICER. (Mr. INOUYE in the chair). The nominations will be stated.

THE FOREIGN SERVICE

The Chief Clerk proceeded to read sundry nominations in the Foreign Service, which had been placed on the Secretary's desk.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that these nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

CONVENTION WITH MEXICO FOR SOLUTION OF PROBLEM OF THE CHAMIZAL

The Senate resumed the consideration of Executive N, 88th Congress, 1st session, a convention with Mexico for the solution of the problem of the Chamizal.

At this point, by request, as in legislative session. Mr. SPARKMAN introduced the bill (S. 2394) to facilitate compliance with the convention between the United States of America and the United Mexican States, signed August 29, 1963, and for other purposes.

(See the remarks of Mr. SPARKMAN relating to the above bill, which appear under a separate heading, following the vote on the pending convention.)

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at this time there may be a quorum call, and that the time required for it be not charged to the time available to either side under the agreement.

The PRESIDING OFFICER. Without objection, it is so ordered; and the clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, the time allotted under the unanimous consent agreement was placed in charge of the majority leader and the minority leader. I ask unanimous consent that the time under my control be transferred to the control of the distinguished Senator from Alabama [Mr. SPARKMAN].

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, I ask unanimous consent that the time allotted to the minority leader be transferred to the distinguished Senator from Texas [Mr. TOWER].

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPARKMAN. Mr. President, I wish to propound a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SPARKMAN. Has the treaty been laid before the Senate?

The PRESIDING OFFICER. The treaty is before the Senate.

Mr. SPARKMAN. Mr. President, I rise in support of the Convention With Mexico for Solution of the Problem of Chamizal, Executive N, 88th Congress, 1st session. The Committee on Foreign Relations favorably reported the convention to the Senate on December 13 by a vote of 16 to 0, following hearings during which the committee heard representatives of the executive branch and anyone else wishing to testify.

Ratification of this convention by the United States and Mexico will settle a longstanding boundary dispute between the two countries, a dispute that has been a thorn in their relations for almost 100 years.

Back in 1910, the United States and Mexico agreed to arbitrate this dispute over the Chamizal, which is an area of

land situated to the north of the Rio Grande River, in the region of El Paso, Tex., and Ciudad Juárez, Mexico. While the arbitral award was to be "final and conclusive upon both Governments, and without appeal"—those words are taken from the arbitration treaty itself—the decision handed down was not acceptable to the United States. This Government refused to abide by the arbitral award. From that time on, each U.S. President has been plagued with the issue of the Chamizal. Diplomatic negotiations to settle the boundary dispute were to no avail until a new start was made in 1962 by President Kennedy and President López Mateos, of Mexico. Negotiations which began at that time took into account the entire history of the tract and reserved the juridical positions of the countries. Also mentioned were the views of the people whose interests would be affected in the event a settlement was reached.

Inasmuch as Members of the Senate have before them copies of the treaty and related documents, as well as the committee report and hearings, I shall not attempt to explain every provision of the treaty. Rather, I shall try to confine my comments to the most important features of the treaty and to important matters related thereto.

Under the treaty, the Rio Grande will be located in a new channel, the costs of which will be shared by the two Governments. The center line of the new channel will be the international boundary. The lands to the north of the center line would belong to the United States and the lands to the south of the center line would belong to Mexico.

The acreage now accepted by the United States and Mexico as that awarded by the 1911 arbitral award to Mexico is 437.18 acres, and that is the actual amount of land that would be transferred to Mexico pursuant to the treaty.

Of the 437.18 acres to be transferred to Mexico, 366 acres would come from the Chamizal tract and the other 71.18 acres from an area under the jurisdiction of the United States and located just below Cordova Island, a Mexican enclave. One additional quid pro quo transfer of lands would be involved: Mexico would receive 193.16 acres of U.S. territory next to the 71.18-acre tract already referred to; in turn, 193.16 acres of Cordova Island would be transferred by Mexico to the United States.

Boundary lands have been transferred between the United States and Mexico before. It might be noted that during the Rio Grande rectification project, 1934-38, the Rio Grande was straightened and stabilized in accordance with the provisions of the 1933 convention between the United States and Mexico. In order that the Rio Grande could remain the international boundary, many separate tracts of land were transferred between the two countries. And, pursuant to the Banco Treaty of 1905, the two countries have eliminated over 200 detached "banco" tracts along the river. Some 10,000 acres, formerly on the U.S. side, passed to Mexico, while nearly 18,000 acres formerly on the Mexican side, passed to the

United States. Approval of the Chamizal Treaty, by eliminating the last two detached tracts claimed by Mexico in the El Paso-Juárez Valley, will make it possible to complete the rectification and stabilization project started in 1934.

The Department of State has estimated that the costs of implementing this treaty will be \$29.3 million. However, the United States will receive a payment of \$4.7 million from a Mexican bank for the value of structures which pass intact on lands transferred to Mexico. In addition, it is estimated that the market value of the 193.18 acres of Cordova Island which will be transferred to the United States will be \$6 million. Thus, the net cost to this Government of implementing the treaty is estimated to be \$18.6 million. Certain costs of compensating property owners might amount to an additional \$4 million, and costs of relocating and expanding port-of-entry inspection facilities might reach \$6.1 million more. Then, the appropriations required in connection with the treaty might total \$39.4 million.

At the time the committee acted on the Chamizal Convention, legislation to implement the treaty had not been transmitted to the Congress. However, as stated in the report, the committee wishes to assure the people in the El Paso area whom the treaty will most directly affect—and the Senate as well—that it plans at the earliest possible date to take action on legislation to implement this treaty.

I add, parenthetically, that the implementing legislation has now been received in the Senate, as I stated a while ago. Furthermore, on behalf of the chairman of the committee, I have given assurance that the committee will consider the implementing legislation as soon as possible after the new session of Congress meets.

The Chamizal Convention, it should be emphasized, relates to a boundary dispute, a dispute which has long been an irritant in relations between the United States and Mexico. The committee is of the opinion that the settlement of this dispute is fair and equitable. And the committee believes that the settlement reached is in the interests of the community of El Paso, the State of Texas, and the Nation as a whole.

Mr. President, in my judgment, history will record that the Chamizal Convention was one of the notable accomplishments of the administration of President John F. Kennedy.

The Committee on Foreign Relations strongly recommends that the Senate advise and consent to the ratification of the Chamizal Convention.

There is one thing I wish to mention, beyond my opening statement. I particularly ask for the attention of the two Senators from Texas [Mr. YARBOROUGH and Mr. TOWER].

This comment is based upon the point the junior Senator from Texas [Mr. TOWER] presented to our committee. He did not oppose the treaty as such—he was not arguing against its merits—but he felt that there was a principle involved, that the State of Texas should consent to the transfer of the land on

the Texas side. Our committee felt that the principle would not be applicable here because the Chamizal settlement falls into the category of a boundary dispute.

We have stated in the report—and I invite the attention of Senators to the statement in the report on page 7—that approval of this treaty by the Senate is no to be construed as setting any precedent in situations such as that mentioned by the junior Senator from Texas. This case involves a boundary dispute which falls in the same category as settlements under the banco agreement.

Furthermore, I would point out, as the senior Senator from Texas [Mr. YARBOROUGH] pointed out in his testimony before the committee, that, in a treaty ratified by the Senate in December 1910, the United States agreed to submit the question to arbitration, and the first article of that treaty recited that the Chamizal was a disputed area. In other words, a boundary dispute is involved here. We admitted that in the treaty previously ratified.

Our committee believes that this case falls in the same category as other boundary dispute problems which have arisen in past years.

Mr. MANSFIELD. Mr. President, will the Senator yield me one-half minute?

Mr. SPARKMAN. I yield to the Senator.

The PRESIDING OFFICER. The Senator from Montana is recognized for one-half minute.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum and that the time necessary for the call of the roll not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call may be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I yield myself 20 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized for 20 minutes.

Mr. TOWER. Mr. President, there are three possible views of the proposed settlement.

It has been contended by my friends who support the treaty—and, as has been pointed out by my friend from Alabama, I do not oppose the treaty on its merits—that it would give effect to or recognition of the 1911 arbitration award which the United States refused to abide by on the grounds that the Commission had exceeded its instructions.

It is further looked to as a settlement of a presently existing boundary dispute.

Both these contentions would have some validity if it were not for the character of the settlement covered by the treaty.

It is my contention that because certain lands included in the treaty were

not in dispute, it involves a cession of territory under the sovereignty of the United States and the State of Texas, and therefore flies in the teeth of what I consider to be an established principle that land may not be ceded or detached without the permission of the State involved.

The PRESIDING OFFICER. Without objection, the convention will be considered as having been passed through its various parliamentary stages up to the point of the consideration of the resolution of ratification, which the clerk will read.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Between the United States of America and the United Mexican States for the Solution of the Problem of the Chamizal, signed at Mexico City on August 29, 1963. (Ex. N, 88th Cong., 1st sess.)

Mr. TOWER. Mr. President, I call up my reservation to the ratifying resolution, and ask to have it stated.

The PRESIDING OFFICER. The reservation of the Senator from Texas will be stated.

The legislative clerk read as follows:

Before the period at the end of the resolution of ratification insert a comma and the following: "subject to the reservation, which is hereby made a part and condition of the resolution of ratification, that no exchange of instruments of ratification of the convention shall be entered into on behalf of the United States, and the convention shall not enter into force, until such convention shall have been submitted to and approved by the Legislature of the State of Texas".

The PRESIDING OFFICER. The question is on agreeing to the reservation to the resolution of ratification.

Mr. TOWER. Mr. President, I yield myself 20 minutes.

If the United States takes the position that the 1911 award was invalid, it would appear to me that the dispute is the same as it was prior to the award. In other words, it is a boundary dispute properly within the jurisdiction of the International Boundary and Water Commission.

In such a case the International Boundary and Water Commission would appear to have the authority to settle the boundary under the treaty of 1889, without the necessity of a new treaty.

The Banco Elimination Treaty of 1905 does not apply to the Chamizal. The Chamizal is not a banco, and neither the United States nor Mexico has ever taken the position that it is a banco.

Included in the provisions of the treaty is an area east of Cordova Island, which is also included in the treaty. This area is not now in dispute. The Boundary Commission maps indicate that this area, or at least part of it, is part of what was known as the Weber Banco. The Weber Banco was awarded to the United States in 1930 by the International Boundary and Water Commission under the Banco Elimination Treaty of 1905, and in any event, the Rio Grande rectification project—convention of 1933—would seem to have finally eliminated any question as to the international sovereignty of the Weber Banco.

That is to say, the area of Cordova Island which is included in the settlement is not now in dispute, and must, therefore, be regarded as sovereign territory of the State of Texas.

I should like to address myself to the Banco Treaty of 1905.

The complete title of the so-called Banco Treaty of 1905 is: "Convention Between the United States and Mexico for the Elimination of the Bancos in the Rio Grande From the Effects of Article II of the Treaty of 1884."

Article II of the treaty of 1884 provided that the Rio Grande boundary should follow the center of the normal channel of the river, notwithstanding any alterations in the banks or course of the river, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium, and not by the abandonment of the existing riverbed and the opening of the new one.

The minutes of the Boundary Commission and the work preliminary to the 1905 treaty indicate that the modification of the 1884 treaty was requested by the Boundary Commissioners. In attempting to apply the 1884 treaty, the Commissioners found that the nature of the bancos in the lower Rio Grande Valley rendered its application impractical. For example, at that time, the direct distance from Rio Grande City to the gulf was 108 miles, whereas the course of the river was 241 miles. Due to the problems created with reference to law enforcement and territorial jurisdiction, the Commissioners recommended to their respective Governments that the bancos be eliminated so that the boundary would always be the normal channel of the river. The 1905 treaty follows the recommendations of the Commissioners.

The 1905 treaty was designed to meet a specific situation caused by the erratic course of the river and it is not a precedent for the cession of U.S. land to a foreign power. The treaty refers to 58 surveyed bancos, which did not, of course, include the Chamizal, and further evidence of the limited application of the Banco Elimination Treaty is the fact that it specifically excludes bancos having an area in excess of 250 hectares—494 acres—or a population of over 200 persons.

The area east of Cordova Island is not in excess of 250 hectares, but it has a population well in excess of 200 persons.

What I am trying to point out is that the Banco Treaty of 1905 was really simply an amendment or settlement or clarification of the boundary treaty of 1884, and so was in effect a resolution of a boundary problem.

I note that the area east of Cordova Island, which is being included in the Chamizal Treaty, has not been in dispute. Any dispute that may have existed over that area has long been resolved, and it has been recognized as Texas, or American, soil. Mexico has not claimed it. Therefore, I suggest that we are ceding to the Republic of Mexico an area that is not currently in dispute.

I should like to say a word about the refusal of the United States to accept the arbitration award of 1911.

It has been repeatedly stated that the United States reneged or refused to accept an arbitral award after it had agreed to be bound thereby.

It is correct that the 1910 treaty establishing the Arbitration Commission provides that "the decision of the Commission, whether rendered unanimously or by majority vote of the Commissioners, shall be final and conclusive upon both Governments, and without appeal." It is not questioned that parties can renounce their right to appeal from a decision, but this is not to say that they have thereby waived any right to contest the validity of a decision. The Latin American viewpoint on this question of international law appears to be that parties may renounce their right to appeal but they cannot renounce in advance their right to contest the future award on the ground that it is a nullity.

The dissenting opinion of the American Commissioner in the 1911 Chamizal arbitration states as follows:

It is axiomatic that "a clear departure from the terms of the reference" (Twiss, "The Law of Nations," 2d ed., 1875, p. 8) invalidates an international award, and the American Commissioner is constrained to believe that such a departure has been committed by the majority of the Commission in this case in dividing the Chamizal tract and deciding a question not submitted by the parties.

But this is not all; as the Hague Court recently pointed out in the case of the *Orinoco Steamship Co.*, "excessive exercise of power may consist not only in deciding a question not submitted to the arbitrators, but also in misinterpreting the express provisions of the agreement in respect of the way in which they are to reach their decisions, notably with regard to the legislation or the principles of law to be applied." *United States v. Venezuela*, before the *Hague Court*. AJIL, vol. 5, No. 1, pp. 232 and 233.)

In the case concerning the arbitral award made by the King of Spain on December 23, 1906 (*Honduras v. Nicaragua*), ICJ reports, 1960, page 225, Judge Urrutia Holguin states in his dissenting opinion:

"In America, on the other hand, the legal abuses to which these arbitrations gave rise resulted in the express recognition of the right of States to challenge the validity of arbitral awards in the eleven treaties signed between 1899 and 1912, mentioned above, and in all arbitrations regarding territorial boundaries where the awards were disputed, and which were the following:

"(e) The United States disputed and today still disputes the validity of the award of 1910 [sic] in the Chamizal case with Mexico. Mexico still has not obtained either the carrying out of the award or agreement to submit the question of its validity to the consideration of another tribunal.

"(f) In a matter where not only American countries were concerned, but also Great Britain, the United States disputed the King of Holland's award on the St. Lawrence River boundary; that country's objections were accepted by the other side and the award had no effects."

Mr. President, I point out that since 1947 both the United States and the Republic of Mexico have been members of the International Court of Justice. Mexico could have brought the case before the International Court of Justice

in order to resolve the question of the 1911 award, but it has failed to do so.

Even if it be assumed that there is a legitimate boundary dispute connected with the Chamizal, and even if it were to be assumed that we should have submitted to the award made in 1911, it does not follow that we can freely convey to the Republic of Mexico land which is not now in dispute, without the consent of the State of Texas.

I should like, as a precedent for the contention that we should not or could not cede property belonging to a State without the consent of that State, to refer to the case of *Reid v. Covert* (354 U.S. 1).

This case involved the murder conviction of the wife of a member of the Armed Forces overseas. She was tried by a court-martial without a jury. In holding that Mrs. Covert could not constitutionally be tried by the military authorities, the Court stated:

No agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution. Article VI, the supremacy clause of the Constitution, declares:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

There is nothing in this language which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result. These debates as well as the history that surrounds the adoption of the treaty provision in article VI make it clear that the reason treaties were not limited to those made in "pursuance" of the Constitution was so that agreements made by the United States under the Articles of Confederation, including the important peace treaties which concluded the Revolutionary War, would remain in effect. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined.

There is nothing new or unique about what we say here. This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty. For example, in *Geofroy v. Riggs*, 133 U.S. 258, 267, it declared:

"The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the Government or of its departments, and those arising from the nature of the Government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent."

That is the holding of the Supreme Court of the United States. Therefore my contention is that the cession of the area east of Cordova Island without the permission of the government of the State of Texas flies in the teeth of the Constitution. It does violence to the Constitution as interpreted by the Supreme Court of the United States. It is my personal feeling that all of the transfer of land to Mexico without the approval of the Legislature of the State of Texas is of doubtful legality under the Constitution. Even assuming that the area called the Chamizal is indeed a part of the boundary dispute, there is no question about the area east of Cordova Island, which is not in dispute, and which is being ceded to Mexico under the terms of this treaty.

Mr. President, I intend to ask for the yeas and nays on my amendment. I will not suggest the absence of a quorum if my friend from Alabama has some questions to ask.

Mr. SPARKMAN. I wish to make a brief statement.

Mr. TOWER. I will yield the floor.

Mr. SPARKMAN. I wish to make a brief statement in connection with something the Senator said. He said that it had been contended that we had reneged on the treaty of 1910. I have never made that statement. I know that the United States felt it had good cause not to carry out the 1911 award because it felt that the Arbitration Commission had exceeded its authority. That was the reason why we refused to accept the award.

Mr. TOWER. The treaty creating the board of arbitration specified that the board should determine whether the Chamizal belonged to the United States or Mexico. Instead, the board proceeded with Solomon-like wisdom, and divided the Chamizal. We would not accept that award because we regarded the action as an abrogation of the terms by which the board was established.

Mr. SPARKMAN. We contended the decision was not within the frame of reference of the establishment of the board.

I yield 15 minutes to the junior Senator from Texas.

Mr. YARBOROUGH. Mr. President, I shall direct my remarks to the specific point under discussion, not to the merits of the treaty itself. I hope to have something to say generally on the treaty later in the debate.

I say to the distinguished senior Senator from Alabama that I will shorten my remarks on this point because I shall make some remarks later, on the treaty in general. However, at this point I should like to address my remarks solely to the question of whether under the Constitution, this question of ratification of the Chamizal Treaty should properly be submitted to and approved by the Legislature of the State of Texas before the treaty can become operative.

By the Articles of Annexation of the Republic of Texas to the United States, in 1845, under which Texas gave up its sovereignty as an independent nation to become a State of the United States, it is provided:

Said State shall be formed * * * "subject to the adjustment by this [Federal] Govern-

ment of all questions of boundary that may arise with other governments."

The reference to the Federal Government is clearly a reference to the United States of America.

There was a dispute at that time between the Republic of Texas and the Republic of Mexico over the southern and western boundaries. The right of settlement of those boundaries was expressly granted by the Republic of Texas to the United States. Or rather Texas gave up any claim to the right it had as an independent nation, to adjust boundaries with foreign nations.

The third article of that compact which the people of Texas often refer to, and regard as binding, was that one of the conditions of annexation was that Texas have the right to divide and create four more States out of its territory, and subdivide itself into a total of five States. Under the same article under which we have the right to divide into five States, we agreed that the Federal Government should have the right to adjust boundaries with other nations.

After the Mexican War, the treaty of 1848, the Treaty of Guadalupe-Hidalgo reaffirmed the boundary that the Republic of Texas had declared on the 19th day of December 1836 to be its southern boundary—that is, between the Republic of Texas and the Republic of Mexico—along the centerline of the Rio Grande, and along the center of the deepest channel, if there were more than one channel. This boundary was fixed by agreement between the United States and Mexico, in the Treaty of Guadalupe-Hidalgo in 1848.

That boundary was reaffirmed in the treaty by which the Gadsden Purchase was acquired in 1853. It was reaffirmed in 1884 by the treaty between the United States and Mexico, in which it was agreed that the line would remain fixed in the Rio Grande.

But by the treaty of 1905 between the United States and Mexico it was agreed that they would take up and settle the status of 58 of what were defined as "bancos." Those were territories of land either south of the Rio Grande or north of the Rio Grande that were cut off from one republic or the other by the action of the river and left on the opposite bank from the bank that was generally considered to be the bank of their territorial jurisdiction. Fifty-eight bancos were identified and named in the report in the treaty of 1905 between the United States and Mexico. Those 58 bancos were 58 territorial areas that existed, surrounded by the territory of a foreign nation partly north of the Rio Grande and partly south of the Rio Grande. Of the bancos north of the Rio Grande, many were separated from the river by land of the United States and were land islands of Mexico wholly surrounded by territory of the United States.

Conversely, south of the Rio Grande, by the action of the river, many bancos were territory indisputably of the United States, were owned by the United States, and owned by U.S. citizens, but were south of the Rio Grande. Many of them not only were south of the Rio Grande, but were separated from the Rio Grande

by territory that was indisputably Mexican territory, and thus were U.S. land islands, entirely surrounded by Mexican territory.

Actually, more than the 58 bancos specifically identified in the treaty were involved. There were islands of Mexican territory north of the Rio Grande River, and islands of American territory south of the river in Mexico. There was Mexican territory in the United States, but north of the river. That is because the Rio Grande for a good part of its course between the United States and Mexico flows through an alluvial flood plain, over a sandy plain. That is true in the valley of El Paso and through most of the territory from Del Rio to Brownsville, which latter city is adjacent to the river near the Gulf of Mexico. The river constantly shifts as it flows through a wide, sandy plain with loose soil, where the banks of the river are in constant change.

As the distinguished junior Senator from Texas has said, the Banco Treaty of 1905 did not cover the whole Chamizal dispute, which had grown up in 1867. The Chamizal dispute was reserved for a later treaty, the treaty of 1910.

I hold in my hand a map that was a part of the testimony on behalf of the United States during the consideration of the Chamizal arbitration case. It gives some idea of the ambulatory nature of the river in the valley of El Paso. To the left of the map is the city of El Paso. The Chamizal area to the west of Cordova Island is shown on the map.

The river shown in green was the river surveyed in 1852. It was located by the Emory-Salazar survey, made by Major Emory, of the U.S. Army Corps of Engineers, and Colonel Salazar, of the Mexican Army Engineers, who jointly surveyed and monumented the boundary between the United States and Mexico.

The river shown in blue is the river of 1889. The river shown in yellow is the course of the river in 1899. The river shown in pink was the river of 1907.

Cordova Island is in this area. All four colors of rivers covered a part of the area the distinguished junior Senator from Texas mentioned, which lies to east of Cordova Island, a part which was adjusted in this treaty, as shown.

At one time, the rivers of 1852, 1889, 1899, and 1907 covered a part of the territory east of Cordova Island and east of the Chamizal as the river moved around.

In 1910, to settle the dispute over the Chamizal, in what was a business area of El Paso, the two nations entered into an arbitration treaty, separate from the Banco Treaty of 1905. In this treaty, it was agreed that the Chamizal tract in dispute was located at El Paso, Tex., and Juarez, Mexico. It was defined as the river valley area, west of Cordova Island and south of the boundary of 1852. The question was proposed to be submitted to arbitration. It was agreed, too, that the award would be binding, and that there would be no appeal.

That convention was ratified by this Senate on December 12, 1910. The significant part was that these two nations, by a treaty ratified in the Senate 53

years ago this month, agreed that this area was disputed territory, and by a treaty submitted the question to arbitration.

By a vote of 2 to 1—the Mexican commissioner and the Canadian commissioner decided against the United States, the U.S. commissioner having disagreed—it was attempted to fix the boundary line in the channel as the river flowed in 1864. The United States contended that the 1864 line was not within the terms of the convention. They were told to decide whether the Chamizal tract was in the United States or Mexico. The commission split and held that a part of the tract was in the United States, and a part in Mexico.

There seems to have been a rapid change in the river in 1864, but the river had not been surveyed that year—1864—or immediately thereafter. That was due to historic causes.

After the South seceded in 1861 and the Confederacy was established in 1862 a Confederate-Texan column invaded New Mexico and captured Santa Fe and Albuquerque. Although the column was victorious there, it was finally defeated in the battle of Glorietta Pass, partly because of a shortage of supplies, and partly because a California column had crossed the desert in their rear. The Confederate-Texan troops had gone far enough west into Arizona to see California territory, but the California troops advanced and occupied El Paso in 1862 and continued to occupy El Paso until the end of the war. They wrote their muster rolls in the deed records of the county in El Paso. I have seen them; I practiced law there for 3½ years. The California troops were stationed there on occupation duty.

Civil government was disrupted. No land grants could be made until after the Civil War had ended. It was some time before normal civil activities were restored. So there was a hiatus of time in which surveys were not made, and there was no actual identification of the channel of the river in 1864.

After the refusal or failure of the parties to settle the Chamizal arbitration by the treaty of 1910, which had followed a historic meeting between President Diaz, of Mexico, and President Taft, of the United States, on the bridge at El Paso, this matter remained as a thorn in the center of all negotiations between the United States and Mexico for more than 50 years.

Now a convention is before the Senate to settle the Chamizal dispute. I shall not discuss the terms generally, other than the proposed reservation that the treaty be not ratified unless the legislature of Texas first approves it.

I refer to the opinion of Martin Richardson, Assistant Attorney General of Texas, to whom the matter was referred. He has given the opinion of the State of Texas, as approved by Mr. Waggoner Carr, by numerous statements in the press that this was not a Texas matter.

A number of cases in the Texas courts have challenged the constitutionality of the Banco Treaty, because the territory in dispute, belonged, in the one case, to

Mexico, and in the other case to the United States.

All of it was a part of the adjustment of the boundary in this alluvial flood plain; and the Attorney General of Texas pointed to these four cases in the court of civil appeals of El Paso, in some of which writs were refused by the Supreme Court of Texas, in which the court held that these changes in sovereignty or dominion, as in the *banco* case did not invalidate the treaty. They were changes in which it is provided that the owners of the land shall retain their titles to the land and will retain the right to live on the land, retain their existing citizenship, or assume citizenship in the nation to which the land was granted. The court held that this was a constitutional treaty action and was an adjustment of the location of an international boundary; and four times those cases were upheld in the appellate courts of Texas, beginning with the first decision in 1932, out of the courts of El Paso. They have been uniformly upheld by those courts, which have held that the adjustments of boundaries, even in the case of the *banco*s, are not transfers of sovereignty, but merely adjustments in the location of an international boundary.

This present treaty is an adjustment in accordance with the terms of the 1910 agreement and within the meaning of the *banco* agreement of 1905, which did not specifically cover this tract, because of the number of people living on it. This adjustment is also within the terms of the holding of the courts that this is an adjustment of the location of an international boundary, and does not deal with a geographical boundary, in the sense of a meridian, and that it is not a mathematical boundary, but is a fluvial boundary which changes with the flow of the river. So, not being a geographical boundary or a mathematical boundary, but being a fluvial boundary, this adjustment or settlement is in keeping with those court holdings; and the matter of cession of territory is not involved. Therefore, the consent of the Legislature of Texas is not required or involved—just as the chief law officer of Texas has held that the question of Texas sovereignty is not here involved.

Mr. TOWER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized for 5 minutes.

Mr. TOWER. Mr. President, none of the cases cited by the Attorney General of Texas deals with cessions; instead, they relate to boundary disputes. Therefore, while the power of the United States to settle an international boundary dispute may be conceded, the power to cede territory to a foreign power is an entirely different matter. In my opinion, the cases cited by the Attorney General of Texas would not apply to such a cession.

The joint resolution of March 1, 1845, which provides for the annexation of Texas to the United States, provides:

Said State to be formed, subject to the adjustment by this government of all ques-

tions of boundary that may arise with other governments.

At the time of the resolution, the Republic of Texas had been engaged for a period of almost 10 years with Mexico in a dispute over the southern boundary of Texas. Mexico claimed all the land up to the Nueces River, and the Republic of Texas claimed that the Rio Grande was the true boundary. A virtual state of war existed in this area, and the seriousness of the dispute is further evidenced by the fact that the Mexican-American War broke out within a year following the annexation of Texas.

It was with this dispute in mind that the annexation resolution provided that the U.S. Government would have the power to settle boundary questions arising with other governments. It was with the specific dispute above referred to in mind that this language was put into the resolution; and it is not to be supposed that the U.S. Government thereby intended to have a continuing right to change the boundary of Texas at will. As far as we know, no such provision exists with reference to other States.

Mr. President, I also point out that I do not believe this convention relates to the *Banco* Treaty of 1905, which had to do with the rectification of a boundary, for, as my colleague [Mr. YARBOROUGH] has said, the *banco*s had been isolated on the wrong side of the river, and that was simply done subsequent to the treaty of 1884.

In this case we have no rectification of a river boundary involved in connection with the land in the Cordova Island which is in dispute. Therefore, I think it must be conceded that this is a cession of land to Mexico.

I ask unanimous consent that at this time there may be a quorum call, without charging the time required for it to the time available to either side under agreement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, on the question of agreeing to the reservation proposed by the Senator from Texas [Mr. TOWER], I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

Mr. TOWER. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. TOWER. I point out that the Republic of Mexico or many of the people of Mexico still claim some islands off the coast of California. For example, Catalina Island is one; San Clemente is another; and there are others. If we follow the bad precedent proposed in this

case, by ceding to Mexico land belonging to Texas, we might be troubled later on by some other claims, not just from our good neighbors to the south, but also from our good neighbors to the north, who might get the idea that the United States is in a generous mood and is prepared to cede away a great deal of property, simply to mollify and placate our friends.

Mr. MORSE rose.

Mr. SPARKMAN. Does the Senator from Oregon desire to have time yielded to him?

Mr. MORSE. Yes; 1 or 2 minutes.

Mr. SPARKMAN. I yield 2 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 2 minutes.

Mr. MORSE. Mr. President, I have worked on this case, insofar as studying it is concerned, for a long time. I have previously spoken on the floor of the Senate in support of the treaty. So on this occasion, I shall not repeat those remarks, except to say that I think our Government is to be congratulated on the negotiated adjustment it has made to correct what I consider to be an inexcusable wrong that the United States committed against Mexico, when, after it agreed to go into arbitration and negotiation in regard to this matter, it walked out on the decision. That course of action cannot be justified, particularly when we profess to the rest of the world that we believe in the settlement of disputes by means of the application of the rules of law. When decisions go against us, we should go with the decisions.

In my judgment, there never has been justification for the position the United States took. I have been involved in a great deal of arbitration work during my lifetime; and it is a common technique for the losing side to claim that the arbitrator went beyond the terms of reference.

Mr. President, when we go into an arbitration and when we accept jurisdiction by a tribunal—as we did, and there is no question about the competency and high qualifications of the board of arbitration—we should stand by the results.

Ever since 1911, this matter has been a bone of contention between the United States and Mexico. It has not been helpful to our country, in connection with public opinion in Mexico. I do not know of a single time when I have been in Mexico when this matter has not been thrown into my face. So I am very glad that, at long last, we have negotiated an honorable settlement, as represented by this treaty with Mexico.

I highly commend our negotiators, and I enthusiastically support the treaty.

Mr. TOWER. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. TOWER. Mr. President, I believe the issue is being obscured. Regardless of the merits of the award of 1911, the fact remains that there is involved in the treaty the cession of territory that is not currently in dispute. If the award was

a just award in 1911, why do we not abide by the award of 1911 and give up that portion of the Chamizal which was awarded to Mexico in 1911? We are going beyond that. Actually, this is a new ball game. We have drawn a new boundary, taking in land that was not comprehended in the deliberations of the original Chamizal arbitration commission. Therefore, I contend that we are ceding land that belongs to the State of Texas and the United States.

Mr. SPARKMAN. Mr. President, I yield 2 minutes to the Senator from California [Mr. KUCHEL].

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mr. KUCHEL. Mr. President, I speak as an American, born in the State of California, whose State and whose people have been enriched over their long history by a culture from the people of Latin America, and most particularly by the people and the culture of Mexico.

I believe I know the Mexican people quite well. There is no more gallant race in this hemisphere or on this globe. In the years ahead, it would be my fervent prayer that the people of the United States maintain and strengthen the bonds of cordiality, of amity, and of brotherhood between our two closest neighbors, Canada to the north and Mexico to the south, for our aspirations as people are precisely the same.

In my judgment, it is regrettable that for almost a century problems which should have been solved long ago have continued as an irritant to the bonds of friendship we have been trying to strengthen with our neighbors to the south.

Today, the Senate has to shear away the type of dispute which should have been set at rest half a century ago.

The Chamizal dispute, which has now existed for almost a century should have been set at rest by the Government of the United States 52 years ago. For it was in 1910 that both of our nations signed a convention referring this matter to arbitration. In 1911, the International Boundary Commission awarded part of the Chamizal tract to Mexico. Regrettably, the United States failed to put this award into effect.

The Senate of the United States will now approve a convention which generally carries out the 1911 arbitral award. Various land will be exchanged. There will be a net transfer of over 437 acres to Mexico.

The people of Mexico, our beloved friends, may look upon this convention as one more binding tie between us to help make this Western Hemisphere a place for people to live together in happiness, in mutual assistance—loving their liberties and peacefully settling their disputes and their disagreements. There must not be unresolved issues between our two great peoples.

It has been said in debate that the Government of the United States entered into an agreement to arbitrate a dispute and then saw fit, when the arbitration award was made, to walk away from it. That is not the path which our beloved country should tread.

I wish my country to proceed in honor in all its diplomatic relations with all the nations of the world. I am delighted that the Government of the United States, at long last, acting under a two-nation Commission appointed by the chiefs of state of the two countries involved, has determined upon a reasonable and satisfactory manner in which to resolve the dispute.

In this connection, I recall that early this year I was a delegate to the Mexican-American Parliamentary Conference in Mexico. All of the American delegates had an opportunity to sit down with a distinguished civil servant, the then Ambassador to Mexico from the United States, Thomas Mann. I was singularly impressed with his qualifications and his dedication to his country. He traced the history of the Chamizal dispute. He gave his own frank recommendations as to what he thought should be the ingredients by which this disagreement should be set at rest. The treaty before the Senate follows the line of logic which he meticulously outlined.

Mr. President, I came away feeling that there was now an opportunity to bring the Chamizal dispute to a successful and fair conclusion. I am delighted, incidentally, that Ambassador Mann now takes his place as a high-ranking official in our Department of State charged with the prime responsibility of fostering good relations in this hemisphere with our neighbors to the south.

Thus, I look forward to voting for the treaty precisely as it came from the Foreign Relations Committee, and I look forward, too, to the settlement between our two countries of other disagreements between our two nations, particularly that with respect to the waters of the Colorado River, particularly to the usability of those which, by treaty, go to Mexico, for there, as here, we have a duty to proceed in honor and in fairplay.

At any rate, this is a happy day in the good relations of Mexico and the United States. The Senate is about to demonstrate its desires to strengthen the ties between these two great peoples.

I look forward hopefully toward a continuing strengthening of the friendship and the brotherhood between the people of the United States and the people of Mexico.

Mr. YARBOROUGH. Mr. President, will the Senator yield?

Mr. SPARKMAN. I yield 1 minute to the Senator from Texas [Mr. YARBOROUGH].

The PRESIDING OFFICER. The Senator from Texas [Mr. YARBOROUGH] is recognized for 1 minute.

Mr. YARBOROUGH. Mr. President, the question that my distinguished colleague from Texas raises can be clarified by reference to a map. Unfortunately, maps cannot be printed in the CONGRESSIONAL RECORD. However, Senators will observe on the map which I hold in my hand that the area being adjusted is the area of the shifting channel in the alluvial fan of the Rio Grande. It is the area east of Cordova Island. Looking at the map one can see the river in various positions between 1852 to 1907. Cordova Island is immediately to

the east. The map attached to the treaty shows what is being adjusted. All of what has been found to be in Mexico is far south of where the river originally was in 1889 and 1899, as shown on the colored map.

The hatched lines indicate that what is being awarded by the United States was indisputably south of the river in 1889 and 1899.

There was a great flood in 1899, and by agreement between the mayor of Juarez and the mayor of El Paso, an artificial channel was cut into the neck of Cordova Island because both cities were being flooded. Since that time, that area of land—approximately 400 acres—at Cordova Island has been land sticking up into the heart of El Paso, and it has been in dispute with Mexico.

That problem is being adjusted under the treaty. All of the territory is south of the land that is within the historic frame of reference of land whose location was covered by varying shifts of the channel of the Rio Grande River.

Mr. TOWER. Mr. President, I yield myself 2 minutes. I do not question the merits of the treaty. This is a question which should be resolved. I have always hoped for good, amicable relations with our friends to the south. Indeed, I believe the treaty has much merit. What worries me is the precedent set in ceding what I consider to be land that is not in dispute, and therefore land belonging to the sovereign State of Texas and to the United States.

I merely ask for the concurrence of the Legislature of the State of Texas, which I believe would be forthcoming. I am reasonably sure that it would be. I believe with that consent we could proceed in an orderly way with a sound precedent, and establish and make effective the treaty, which I believe would remove a sore spot.

I should like to emphasize that I have not questioned the merits of the arrangement of the settlement. I merely raise a legal question which I believe should and must be raised.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that further proceedings under the quorum call may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the Tower reservation to the resolution of ratification. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from Louisiana [Mr. ELLENDER], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Tennessee [Mr. GORE], the Senator from Arizona [Mr. HAYDEN], the Senator from Missouri [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the

Senator from Arkansas [Mr. McCLELLAN], the Senator from Oklahoma [Mr. MONRONEY], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Florida [Mr. SMATHERS], and the Senator from Tennessee [Mr. WALTERS] are absent on official business.

I further announce that the Senator from California [Mr. ENGLE] is absent due to illness.

I further announce that, if present and voting the Senator from Idaho [Mr. CHURCH], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from Louisiana [Mr. ELLENDER], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Tennessee [Mr. GORE], the Senator from Arizona [Mr. HAYDEN], the Senator from Missouri [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Arkansas [Mr. McCLELLAN], the Senator from Oklahoma [Mr. MONRONEY], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Florida [Mr. SMATHERS], and the Senator from Tennessee [Mr. WALTERS] would each vote "nay."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT], the Senator from Kansas [Mr. CARLSON], and the Senator from Iowa [Mr. HICKENLOOPER] are absent on official business to accompany the President of the United States to the United Nations.

The Senator from Colorado [Mr. DOMINICK] and the Senator from New Mexico [Mr. MECHEM] are necessarily absent.

The Senator from Pennsylvania [Mr. SCOTT] is absent on official business to attend the presidential inauguration in Korea.

The Senator from Wyoming [Mr. SIMPSON] is absent because of illness in his family.

The Senator from Kansas [Mr. PEARSON] is detained on official business.

The Senator from Delaware [Mr. BOGGS] is necessarily absent attending the funeral of a friend.

On this vote, the Senator from Kansas [Mr. PEARSON] is paired with the Senator from Colorado [Mr. ALLOTT]. If present and voting, the Senator from Kansas would vote "yea" and the Senator from Colorado would vote "nay."

On this vote, the Senator from Wyoming [Mr. SIMPSON] is paired with the Senator from Pennsylvania [Mr. SCOTT]. If present and voting, the Senator from Wyoming would vote "yea" and the Senator from Pennsylvania would vote "nay."

The result was announced—yeas 13, nays 64, as follows:

[No. 270 Ex.]

YEAS—13

Beall	Hruska	Tower
Byrd, Va.	Jordan, Idaho	Williams, Del.
Curtis	Mundt	Young, N. Dak.
Ervin	Saltonstall	
Goldwater	Thurmond	

NAYS—64

Aiken	Case	Hart
Anderson	Clark	Hartke
Bartlett	Cooper	Hill
Bayh	Cotton	Holland
Bennett	Dirksen	Humphrey
Bible	Dodd	Inouye
Brewster	Douglas	Jackson
Burdick	Eastland	Javits
Byrd, W. Va.	Fong	Johnston
Cannon	Gruening	Jordan, N.C.

Keating	Miller	Robertson
Kennedy	Morse	Russell
Kuchel	Morton	Smith
Lausche	Moss	Sparkman
Long, La.	Muskie	Stennis
Mansfield	Nelson	Symington
McCarthy	Neuberger	Talmadge
McGee	Pastore	Williams, N.J.
McGovern	Pell	Yarborough
McIntyre	Prouty	Young, Ohio
McNamara	Proxmire	
Metcalfe	Ribicoff	

NOT VOTING—23

Allott	Fulbright	Monroney
Boggs	Gore	Pearson
Carlson	Hayden	Randolph
Church	Hickenlooper	Scott
Dominick	Long, Mo.	Simpson
Edmondson	Magnuson	Smathers
Ellender	McClellan	Walters
Engle	Mechem	

So Mr. TOWER's reservation to the resolution of ratification was rejected.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the resolution of ratification?

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. TOWER. Mr. President, I yield myself 1 minute.

I regrettably announce that I must vote against the resolution of ratification, because my reservation was not included in the ratifying resolution. I want it understood and indicated in the RECORD that I am not questioning the merits of the treaty. I believe it is a highly meritorious treaty, but I question the legal precedent which we are setting. For that reason I feel compelled to vote against the resolution of ratification.

Mr. SPARKMAN. Mr. President, I yield 1 minute to the Senator from Alaska [Mr. GRUENING].

Mr. GRUENING. Mr. President, this treaty is the fulfillment of a solemn obligation entered into by the United States 62 years ago. At that time we submitted the question to arbitration. The river changed its course, and under existing agreements and treaties, land that had been shifted from one side of the river to the other largely belonged to Mexico.

Mexico and the United States submitted the question to arbitration, and the board of arbitration, consisting of three members, included a distinguished Canadian jurist, who decided largely against the United States and for Mexico. All the historic precedents and the facts show that that was a correct decision. Mexico was in a state of revolution at the time the settlement should have been made in 1913, and it was difficult perhaps to comply with the arbitration award immediately, but it should have been done at the earliest opportunity, which was when stability and an era of peace were reestablished with the end of the revolution in 1920, and the inauguration of the regime of President Oberon. But it was not done.

It is one of the great achievements of President Kennedy that 50 years after the event he saw the importance of this issue and initiated proceedings by which the treaty has now been brought before the Senate. The treaty should be ratified. It is merely a fulfillment of the pledge by the United States. It is necessary to do this as a matter of justice and as a matter of vindicating our own honorable pledges.

Congratulations are due to the Chief Executives of both nations, to President Kennedy posthumously, to President Lopez Mateos, who brought the matter to President Kennedy's attention, and to President Johnson who, of course, completed his part of his predecessor's purpose. Congratulations are also due to Mexico's Minister of Foreign Relations, Manuel Tello, and to our Ambassador Thomas C. Mann, who conducted the negotiations with efficiency and good will.

The amicable settlement of this issue is, moreover, a cause for satisfaction to both our republics. Mr. President, I ask unanimous consent to have printed at this point in the RECORD two statements I made previously, the first entitled "The Settlement of the Chamizal Issue, a Great Kennedy Achievement"; and the second, "The Chamizal Settlement; an Act of Statesmanship" by President Kennedy.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

[From the CONGRESSIONAL RECORD, July 22, 1963]

THE SETTLEMENT OF THE CHAMIZAL ISSUE, A GREAT KENNEDY ACHIEVEMENT

Mr. GRUENING. Mr. President, the administrations of President John Fitzgerald Kennedy and of President Adolfo Lopez Mateos, of Mexico, are to be warmly congratulated on the pending and announced settlement of the nearly century-old Chamizal dispute.

The Chamizal is an area of some 600 acres which, owing to a change in the course of the river—known in the United States as the Rio Grande and in Mexico as the Rio Bravo del Norte—found itself north of that stream's flow and presumably de facto moved from Mexico to U.S. territory and sovereignty. In the intervening years it was deemed by Texans and North Americans to be a part of their city of El Paso, Tex., and by Mexicans to be a part of their city formerly called El Paso del Norte and later renamed Ciudad Juarez.

The issue wrought by these conflicting views was raised repeatedly by Mexicans in the 19th century as were other land alterations brought about by changes in the river's course.

Bearing upon this issue was the language in a number of treaties and conventions between the United States and Mexico. First, there was the Treaty of Guadalupe Hidalgo of 1848 between the United States of America and the United States of Mexico which concluded the war between them.

That treaty fixed the boundary between the two nations. It established that as beginning 3 leagues from land opposite the mouth of the river's deepest branch and then up the middle of that river following the deepest channel, where there was more than one, to the point where it strikes the southern boundary of New Mexico—and the specifications in the treaty beyond that do not concern us here because the river ceases to be the boundary at El Paso and Ciudad Juarez. The Gadsden Treaty of 1853 reaffirmed that part of the boundary.

The river, however, was not keeping within bounds, and in 1882 a boundary convention was adopted to provide for the reestablishment of the monuments or markers which had been displaced or dislodged by unruly waters.

Two years later, in 1884, another boundary convention provided means for settling channel changes as they might affect the earlier established boundary. However, article one of that convention provided:

"The dividing line shall forever be that described in the aforesaid Treaty (of Guadalupe-Hidalgo) and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the courses of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not the abandonment of an existing river bed and the opening of a new one."

In 1889 there was another convention establishing the present international boundary commission, and two more conventions, in 1895 and 1900, extended its life, the latter of these, indefinitely.

In 1905 a convention settled the ownership of some 58 bancos or sandbars which the river's vagaries had detached from the shore by deciding that they should go to the country from whose shore they had been detached.

None of these conventions touched the larger issue of Chamizal. But in 1896 one Pedro Ignacio Garcia presented evidence to the two boundary commissioners that he had inherited some land in the Chamizal from his grandfather, Don Lorenzo del Barrio, who had acquired it by purchase, and that his grandfather had occupied it peaceably, as had his son, and that it had been occupied by Garcia himself until in 1873, "in consequence of the abrupt and sudden change of the current of the Rio Bravo," his land was left on the other side of the river in El Paso, Tex. He declared that since that change had taken place he had not dared occupy his land "fearful that some personal injury might befall from the part of a few North Americans, who supposing this land to belong to the United States of North America, pretended to come into possession of the same." Garcia added that he did not know which of the two governments, the United States or Mexico, he should recognize for the payment of taxes.

Garcia made a good point in raising the tax question. But his claim was not the only concomitant of this unprecedented and unique situation. The Commissioners—Col. Anson Mills, representing the United States, and F. Javier Osornio, representing Mexico—could not agree and felt that the issue involving so much personally owned property was beyond their capacity to adjudicate. But Commissioner Mills had written the Secretary of State, Richard Olney, that he was fearful that writs of ejectment might be demanded by American citizens who had occupied this area and that if the Mexicans should resist there might be bloodshed.

It may be cited, parenthetically, Mr. President, that this area lay west of the Pecos, where it was once believed and alleged that there was not much of any law, and in that day the border—as those who have followed the "westerns" have gathered—was a turbulent area where violence was often the rule. If the episode has not been portrayed in any westerns, it should make a TV or movie thriller—especially now that there is a happy ending—an idea I pass on for what it may be worth without claim to discovery or copyright.

In a letter to the Secretary of State of August 4, 1896, Commissioner Mills raised what would be the crucial question in the Chamizal case, namely, whether the Chamizal severance had taken place by gradual erosion and deposit of alluvium, which would bring it under the provisions of article 1 of the Convention of 1884, in which case it would stay with the United States, or whether the river had rapidly changed its course in which case it would go to Mexico. The Mexican Commissioner was contending that the latter was the case. The American Commissioner disagreed.

A lengthy correspondence between the Governments ensued. On December 4, 1897, Commissioner Mills, now a brigadier general,

retired, wrote John Sherman, Secretary of State in President McKinley's Cabinet, suggesting that a third Commissioner, not a citizen of either the United States or Mexico be appointed to act as arbiter on issues on which the two Commissioners could not agree, adding that this was perhaps the most important case submitted for the Commission's consideration and "presented great provocation to the citizens of both countries for violence and disorder, where so many small tracts of land are claimed by citizens of both nations."

The Mexican Government, when this suggestion was made known to it, properly pointed out, through its Secretary of Foreign Relations, Ignacio Mariscal, that the existing boundary convention made no provision for a third member, and would, in any event, have no power to settle this issue, and proposed that it be approached with a new treaty to ascertain the pros and cons of the Chamizal issue and decide it. He said that the President of Mexico would, through his Department, so propose, and that the chief of one of the several nations be asked to serve as arbiter—mentioning the Presidents of the Republics of Chile, Colombia, or Ecuador or the King of Belgium.

Secretary Sherman replied, through U.S. Ambassador to Mexico, Powell Clayton, that "while accepting the proposition in principle," Mexico's counterproposal gave "the matter an extension which was not at all contemplated in the original proposition of this Government," and that he was "not prepared to recognize the necessity for so elaborate a proceeding at this time. The question at issue is not so much one of international right or disputed interpretation of the Treaty of Guadalupe Hidalgo, as it is the application to the matter of the ordinary rules and precedents of law with respect to changes in a fluctuating river boundary. The question being essentially judicial, and not involving the element of friendly compromise, which is so often apparent in the settlement of international disputes by a neutral arbitrator, I am still of the opinion that it can find a just and satisfactory solution without resorting to a new treaty, or appealing to the kindly offices of a third state, and that the simplest and most practical way to determine it is to enlarge the commission by the appointment of an American or Mexican jurist upon whom the two Governments may be able to agree. In this manner, the existing convention will be sufficient for the determination of the question."

Ambassador Powell Clayton transmitted the text of this letter to Secretary Mariscal and followed it up with a personal interview. He then wrote to Secretary Sherman:

"I confess that I was at a loss to answer his objections as to the lack of authority for the appointment of a third commissioner, article 2 of the treaty of March 1, 1889 having provided for the number of commissioners and having made no provision for the adding thereto."

What Ambassador Clayton was saying diplomatically to his boss, the Secretary of State, was that the Secretary was wrong and Mariscal was right. He could probably do this safely. A brigadier general in the Union Army, Clayton had been Governor of Arkansas, later was elected and reelected U.S. Senator, and to the end of his life was virtually the Republican boss of his State.

In any event, Mariscal renews his proposal for a new convention but the McKinley administration and the succeeding Theodore Roosevelt administration took no further steps in the matter.

Meanwhile, various incidents, such as the ejection by the El Paso authorities of Mexican citizens from what they considered their homes in El Chamizal and resulting official protests brought home the need of some action by the United States.

Renewing the effort to secure it, Mexico's Ambassador to the United States, Enrique C. Creel, wrote to Secretary of State Elihu Root on July 19, 1907, again requesting a new treaty or convention and proposing that it provide that a Canadian jurist be made a third member of the International Boundary Commission, saying:

"My Government believes that the universally recognized respectability of the Government of Canada and its preeminent impartiality toward the Mexican and American Governments are a sure pledge of the justice that will guide the acts of the Commission it may appoint and constitute the fullest guarantee for the high contracting parties."

The administration of President William Howard Taft acceded to the long-repeated Mexican pleas for a new treaty—and with a Canadian jurist as a third member—which was worked out in correspondence between Mexico's Ambassador Francisco León de la Barra and Secretary of State Philander Chase Knox.

The new convention between the United States and Mexico to deal with the Chamizal case provided that the existing International Boundary Commission be enlarged by the addition of a Canadian jurist, Eugene Lafleur. The two pertinent articles provided:

"ARTICLE III

"The Commission shall decide solely and exclusively as to whether the international title to the Chamizal tract is in the United States of America or Mexico. The decision of the Commission, whether rendered unanimously or by majority vote of the Commissioners shall be final and conclusive upon both Governments and without appeal. The decision shall be in writing and shall state the reasons upon which it is based. It shall be rendered within 30 days after the close of the hearings.

"ARTICLE VIII

"If the arbitral award provided for by this convention shall be favorable to Mexico, it shall be executed within the term of 2 years, which cannot be extended and which shall be counted from the date on which the award is rendered."

The Commission, on June 15, 1911, awarded the greater portion of El Chamizal to Mexico, Canadian Commissioner Lafleur and Mexican Commissioner F. B. Puga affirming, and U.S. Commissioner Anson Mills dissenting.

Based on the evidence which comprises several volumes of testimony, documents, records, and so forth, the Commission's opinion was "that the accretions which occurred in the Chamizal tract up to the time of the great flood in 1864 should be awarded to the United States of America, and that inasmuch as the changes which occurred in that year did not constitute slow and gradual erosion within the meaning of the Convention of 1884, the balance of the tract should be awarded to Mexico."

And so the conclusive paragraph of the award reads as follows:

"Wherefore the presiding Commissioner and the Mexican Commissioner, constituting a majority of said Commission, hereby award and declare that the international title to the portion of the Chamizal tract lying between the middle of the bed of the Rio Grande, as surveyed by Emory and Salazar in 1852, and the middle of the bed of the said river as it existed before the flood of 1864, is in the United States of America and the international title to the balance of said Chamizal tract is in the United States of Mexico."

Unfortunately—for the good name of the United States—the provisions of the treaty were not carried out. The treaty provided that the award of the Commission would "be final and conclusive upon both governments and without appeal" and that it

should "be executed within the term of 2 years."

It was not done. For the first and only time in our history the United States failed to abide by an arbitral award. Why?

The political pressure from Texas was too strong. All the more gratifying, therefore, that it was a Texan, the able U.S. Ambassador to Mexico, Thomas Clifton Mann, of Laredo, Tex., who was given the opportunity and charged with the responsibility of carrying the complex negotiations to the present point of pending settlement. He is carrying out his assignment with skill and dispatch.

A careful reading of the voluminous material which makes up the Chamizal case leads to the conclusion that based on equity Mexico had a good case from the beginning. After the Commission's painstaking sifting of the evidence, and its award based thereon, there should have been prompt compliance by the United States with the award. The United States regrettably cannot wholly erase a 50-year failure to fulfill its obligation but President Kennedy has now wiped this escutcheon clean and vindicated the good name and good faith of the United States.

There may be some individual hardships among those whom the carrying out of the award will affect. Had the United States acted as it should have on or before June 15, 1913, the damage and the dislocation as well as the cost to Uncle Sam would have been much less. There is now an obligation on our Government to deal generously and equitably with all affected. Whatever the costs, they are negligible when measured against the value of salvaging our Nation's honor. Moreover, there is a priceless spiritual dividend in demonstrating to the people of Mexico that the United States is determined to be a good neighbor.

So again, congratulations to President Kennedy and to all the people of our two adjacent republics.

I ask unanimous consent that three articles from the New York Times reporting on the Chamizal agreement, one under a Washington dateline by Henry Raymont, and two from El Paso and Ciudad Juarez by Jack Langguth, be printed at this point in my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

"[From the New York Times]

"UNITED STATES AND MEXICO AGREE ON BORDER—WASHINGTON GIVES UP CLAIM TO EL CHAMIZAL AREA

"(By Henry Raymont)

"WASHINGTON, July 18.—The United States and Mexico announced today a final agreement for the settlement of the longstanding dispute over the El Chamizal, a border zone between El Paso, Tex., and Ciudad Juarez, Chihuahua.

"The agreement was a major step in the Kennedy administration's efforts to end a troubled episode in relations with the neighbor Republic.

"President Kennedy said solution of the 50-year-old dispute would make a 'significant contribution' to relations between the two countries and to the development of the twin cities of El Paso and Ciudad Juarez.

"The accord, which came after nearly 6 months of intensive, complicated negotiations, was announced simultaneously by the White House in Washington and by President Adolfo Lopez Mateos in Mexico City.

"The terms of the agreement will be written into a convention in the next 2 months, officials said. The pact will then go to the Senates of the two countries, probably in October, for ratification.

"The document stipulates several shifts of territory, for a net transfer to Mexico of 437 acres of land. The Rio Grande, which can

alternate from a trickle to a torrent depending on seasonal rainfall, will be diverted northward to mark a new boundary between El Paso and Ciudad Juarez.

"To purchase buildings and lands belonging to U.S. citizens in the area awarded to Mexico, the U.S. Government is expected to spend about \$28 million. It must also relocate to other parts of El Paso about 3,500 persons who will lose their homes.

"The Texas city, on the other hand, will take over a bulge of 193 acres, about one-third of what was known as Cordova Island. The area, mainly barren land, was a major traffic bottleneck.

"Kennedy pledge fulfilled

"The drafting of the agreement fulfills a pledge Mr. Kennedy made during his visit to Mexico in June last year.

"In a private meeting with President Lopez Mateos, he is reported to have acknowledged that the United States had been wrong in refusing to accept the decision of a 1911 arbitration commission that awarded the El Chamizal area to Mexico. Mr. Kennedy is said to have promised he would make 'every effort' to correct that error.

"U.S. officials attached great significance to two other features of the settlement.

"First, it erased the only known case in which the United States had failed to comply with an international arbitration award. Mexico, like all Latin American states, has always been a strong supporter of arbitration.

"Second, it removed a major source of irritation in United States-Mexico relations. The El Chamizal issue had long been used by Communists and ultra-nationalists in Mexico and throughout Latin America in accusing the United States of 'colonialism' and of defaulting on its international obligations.

"The dispute dates back to 1864 when the Rio Grande, which marks the border between Chihuahua and Texas, changed its course. The El Chamizal area, which had been on the river's southern bank, was left on the northern Texas side by the change.

"[From the New York Times]

"INHABITANTS SHOW DISTRESS

"(By Jack Langguth)

"EL PASO, July 17.—The people of El Chamizal, whose property will be deeded to Mexico under the agreement announced today, were distressed to find themselves suddenly south of the border.

"While the 3,500 U.S. citizens directly affected by the agreement were reluctantly making plans to move, however, El Paso's civic leaders expressed satisfaction that a troublesome breach between the nations was at last being closed.

"The U.S. Ambassador to Mexico, Thomas C. Mann, a former Laredo, Tex., attorney, is credited with having shepherded the proposed settlement past opposition from property owners in El Chamizal and political conservatives in southwest Texas.

"John Birch Society members and others opposed the agreement as some kind of threat to our sovereignty, but just about everybody else was behind Tom Mann from the beginning," one leader said.

"Proponents of the pact said about 85 percent of El Chamizal's homeowners were pleased with the transfer. But conversation with men and women through the area showed attitudes ranging from resignation to bitterness.

"This is something between the two countries. We can't do anything about it," Mrs. Marclano Carrasco said. She is the mother of four children, and her husband works at a nearby mine and smelter supply company, which will remain within the U.S. boundary.

"We were happy here, and we don't like to be uprooted. We were going to pay off all

our house next year. Now we'll have to start all over again," Mrs. Carrasco said.

"Residential neighborhoods cover about one-third of the 630 acres that will be turned over to Mexico if both countries' legislatures approve the settlement. The city of El Paso will receive 193 acres of vacant land on Cordova Island.

"NEIGHBORHOODS ARE VARIED

"El Chamizal is divided into four different sections, each with its own character and color. Along the existing border, near Santa Fe Avenue, the district is a welter of taxi stands, tam shops, and weather-beaten houses.

"Six blocks east, the residential neighborhoods, become more colorful and better kept. Painted orange, green, yellow, or pink, two-bedroom houses look out on tended lawns bounded by low fences.

"The corner stores in this area are clean but sparsely stocked, with a few dozen canned goods barely covering a wall shelf. At some, such as Los Alamos grocery store, the clerks speak only Spanish.

"Farther east is an industrial area with warehouses and manufacturing companies standing on sandy plots near the railroad tracks. In the vicinity of Cordova Island, where the United States will receive its 193 vacant acres, cotton is sometimes grown.

"There are also bare stretches of sand along the Rio Grande where patches of weed thrive in the 107° heat. El Chamizal was named for a desert weed, like tumbleweed, which grow in thickets over the entire region.

"Homeowners in the residential sections estimate that the average El Chamizal house and lot last sold for about \$3,500. With replacement costs likely to be far higher in other neighborhoods, however, some residents are pricing their property higher.

"Peter Ramos, who built his own spacious and well-maintained house 8 years ago, worries that the Federal Government will pay him its assessed valuation, or about 35 percent of its market value. 'We'll move,' he said. 'They wouldn't let us stay if we wanted to. But we're all concerned. We don't know what is to come.'

"U.S. officials of the International Boundary and Water Commission, who will handle the relocation, insist that displaced families have nothing to fear. 'There is no question of course, that they will retain their American citizenship and that they will be paid fairly for their property,' one Federal spokesman said."

"MEXICANS HAIL AGREEMENT

"MEXICO CITY, July 18.—Mexican Government circles today described the El Chamizal settlement as a diplomatic victory for their country.

"The newspaper Excelsior carried the headline, 'Mexico Obtains the Greatest Diplomatic Triumph of Its History.'

"The agreement was the lead story in all newspapers. The Government newspaper El Nacional's headline was 'An Old Desire of Mexico Becomes Reality Today.'

"[From the New York Times, July 21, 1963]

"TRADE GAINS SEEN BY CIUDAD JUAREZ—EL CHAMIZAL TRANSFER ADDS SPUR TO BORDER PROJECT

"(By Jack Langguth)

"CIUDAD JUAREZ, MEXICO, July 17.—Officials of this border city, which grew this week by 437 acres with the transfer of the border zone of El Chamizal, expect it will give new impetus to an ambitious building program.

"The United States has long been reluctant to invest in construction or improvements on the northern side of the Rio Grande because of the Chamizal dispute. To the south, however, Mexico has proceeded with a \$14 million border beautification project.

"A museum of arts and history was opened here last Sunday, the first of a proposed

number of cultural and commercial buildings financed by the Mexican Government.

"Sixteen hundred visitors from both sides of the border attended the opening ceremonies. Many were more curious about the building than the exhibition of photographs of Mexican industry on display.

"Some Mexicans describe the museum's circular design, conceived by Pedro Ramirez Vazquez, as resembling an oven or an Indian hut. Most agreed, however, that the finished building, capped with a fiberglass dome and set off by Italian marble and a shallow moat, was an impressive addition to the city.

"A new, four-lane bridge linking Cordova Island with Ciudad Juárez was also recently completed. The formal name for the 178-yard-long span is Friendship Bridge, but Mexicans refer to it as simply 'the new bridge.'

"The largest structure on the 250-acre border site will be a \$360,000 convention center now under construction. When it is completed in October, the city plans to bid for conventions from the United States.

"Conventions will have to be joint enterprises with El Paso," said Manuel de la Torre, an official of the Programa Nacional Fronterizo. "Even with the 150-room hotel we're building, we couldn't house any large group."

"Mr. de la Torre, a graduate of Rensselaer Polytechnic Institute in Troy, N.Y., said he would attempt to bring the college's mid-winter reunion, often held in Havana in the past, here.

"The largest Mexican city along the border with the United States, Ciudad Juárez had a population of 309,337 in 1960. The population of El Paso County that year was 314,070.

"The frontier program also includes improvements in eight other northern border cities—Ensenada, Tijuana, Mexicali, Nogales, Piedras Negras, Nuevo Laredo, Reynosa, and Matamoros.

"About \$4 million has been spent so far in Ciudad Juárez in the expectation that private capital will be attracted to the new commercial center and that downtown merchants will be persuaded to improve their shops.

"The project, headed by a former mayor of Ciudad Juárez, Antonio J. Bermudez, was chiefly designed to make the entire 1,600-mile border between Mexico and the United States a more attractive showcase for Mexican products.

"In El Paso, the tradition of shopping in Mexico is already firmly established. Many housewives make a weekly trip to Ciudad Juárez buying meat at about one-half the price at home and stocking up on sugar and fresh vegetables at substantial savings.

"The Mexican Government estimated before the development program began that the city was selling about \$113,500,000 in goods annually to visitors from the United States, most of them from El Paso. The figure represents 19 percent of the total income of El Paso residents.

"So many Texans cross the border to save about 10 cents a gallon on gasoline that the Texas Legislature, in its most recent session, discussed putting a tax on the contents of car fuel tanks believed filled with Mexican gas."

THE CHAMIZAL SETTLEMENT: AN ACT OF STATESMANSHIP BY PRESIDENT KENNEDY

Mr. GRUENING. Mr. President, a few days ago the preliminaries for the settlement of the longstanding Chamizal dispute were concluded by the signing of an agreement by Mexico's Secretary of Foreign Relations, Manuel Tello, and U.S. Ambassador to Mexico, Thomas C. Mann. I discussed this problem on the floor of the Senate on July 22, offering my congratulations to the Governments of our two neighbor countries and their people on the prospective settlement of a dispute which had marred our relations for nearly a century. I said then, and repeat now, that President Kennedy deserves the highest praise for his direct action to

bring about a solution of a long, vexatious, and complex problem, which has become increasingly difficult with the passing of time and would become even more so if left unsettled any longer.

As the agreement will, in all probability, be presented in the form of a treaty for ratification by the Senate, a complete understanding of the history of this issue, its legal complexities, and the tangible and intangible values involved, is desirable.

Fortunately for this purpose a definitive and scholarly summary has just become available. It is found in an article by Gladys Gregory, for some time professor of government at Texas Western College, and the holder of a Ph. D. degree from the University of Texas. A resident of El Paso, she has, since her days as a graduate student at Austin, studied the Chamizal and other border issues. She writes with authority and with the combined expertise of a trained historian and of a living observer of the event. Her study is printed as No. 2 of volume 1 of *Southwestern Studies* published by Texas Western College and edited by Samuel D. Myles. It is a most valuable contribution.

The Chamizal Award in 1911 favoring Mexico was rejected by the United States although our Nation had agreed to abide by the arbitral award, which, by the terms of the agreement, was to be carried out within 2 years. It was the first time in our history that our Government has declined to honor an adverse verdict after agreeing to abide by the result. As President Kennedy said to the press in Mexico during his visit there earlier this year:

"There have been long negotiations about the Chamizal. This territory was awarded in 1911, but the United States did not accept it * * * but it is a matter that we cannot afford to continue to treat with indifference because the United States failed, after agreeing to arbitration, backed down, and did not accept the report."

This, while in essence the situation, was a slight but wholly warranted oversimplification, because there were technical grounds for believing that the Commission in 1911 which made the award, consisting of a U.S. commissioner, a Mexican commissioner, and a Canadian jurist, exceeded its instructions. A half century of deadlock resulted. But, as Professor Gregory points out, that deadlock could be broken only "by an act of statesmanship on the highest level—a decision that could cut through the accumulation of historical, legal and technical flotsam and lagan the Chamizal case had accumulated."

President Kennedy performed that act of statesmanship.

I ask unanimous consent that Professor Gregory's report "The Chamizal Settlement—A View From El Paso," be reprinted in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

"THE CHAMIZAL SETTLEMENT—A VIEW FROM EL PASO"

(By Gladys Gregory)

"July 18, 1963, was a great day in the El Paso-Juarez Valley, for on this date the Presidents of the United States and Mexico announced their historic decision respecting the Chamizal. Across the Rio Grande in Ciudad Juarez and throughout Mexico, the news was received with much satisfaction, as it signaled for the Mexicans a victory of right and reason that had been overdue for 50 years. The City Council of Ciudad Juarez met in special session to hear and acclaim the eloquent address of President López Mateos, carried from Mexico City by radio and television to all parts of the nation. On the day following, the 19th, full-page advertisements, signed by civic leaders of the State of Chihuahua, appeared in the leading newspapers of Mexico hailing the event as a dem-

onstration of international friendship and cooperation at its best.¹

"The response in El Paso"

"In El Paso the reaction was naturally more restrained, but at the same time, it was favorable. Although there was some criticism of the so-called Kennedy giveaway and some apprehension among residents of the Chamizal area, the weight of opinion, as reported in the local press, accepted the proposed settlement as announced. The mayor and council of the city, members of the county commissioners court, and other local leaders viewed the outcome constructively. While they expressed concern that the interests of residents in the Chamizal should be fully protected, they welcomed the solution of an issue that had long disturbed the two border communities. They also recognized that the settlement would make possible the improvement and beautifying of an undeveloped area along the river, and that it would stimulate the economy of the entire area.² The prevailing attitude seems to have been summed up in the following statement of Federal District Judge R. E. Thomason who, as a former mayor of El Paso and Member of Congress, had gained an intimate knowledge of the problem:

"We wrestled with the Chamizal for 50 years and it would be an eyesore for another hundred years if we don't make a settlement now. I visualize the time when El Paso and Juarez will be the great twin cities of North America and there will be a tremendous development. I would like to see the agreement followed by a real drive to get rid of the slums, a fine beautification program, and a great monumental free bridge.

"The property owners in the area will get justice. Uncle Sam doesn't mistreat his citizens. If any of them don't get a fair value for their property and come into my court, I'll see that they get it."

"The latest stage in the long and tortuous negotiations seeking an agreement began during the meeting of June 1962, in Mexico City, between the Presidents of the United States and Mexico, John F. Kennedy and Adolf López Mateos. The joint communique issued in the names of the heads of state was brief and to the point: 'The two Presidents discussed the problem of El Chamizal. They agreed to instruct their executive agencies to recommend a complete solution to this problem which, without prejudice to their judicial position, takes into account the entire history of this tract.'³ Thus another attempt was made—this time at 'the summit'—to deal with the exasperating issue.

"Intervention of President Kennedy"

"While in Mexico, President Kennedy indicated the priority he gave the matter by saying to representatives of the press: 'As you know, there have been long negotiations about the Chamizal. This territory was awarded in 1911, but the United States did not accept it * * * but it is a matter that we cannot afford to continue to treat with indifference because the United States failed, after agreeing to arbitration, backed down, and did not accept the report.'⁴

"To carry out his commitment, President Kennedy promptly instructed diplomatic and

¹ See issues of July 18 and 19, 1963, *El Fronterizo* and *El Mexicano* (both of Juarez); also *El Universal*, *Excelsior*, *La Prensa*, and *Novedades* of Mexico City. Leading articles in *Continente*, July 1963; *La Nación*, Aug. 1, 1963; *Todo*, Aug. 1, 1963.

² The proposed settlement has aroused much interest and some controversy locally. For typical opinions, see the *El Paso Times*, July 11-21, 1963, and *El Paso Herald-Post*, same dates.

³ The *El Paso Times*, July 19, 1963.

⁴ United States-Mexico, joint communique, Mexico City, June 29-30, 1962.

⁵ The *El Paso Times*, July 8, 1962.

executive officials of the United States to proceed without delay in working out the appropriate policies and details. Within a short time, on July 17, Thomas C. Mann, Ambassador of the United States to Mexico, arrived in El Paso and conferred with Joseph F. Friedkin, U.S. Commissioner on the International Boundary and Water Commission, and with officials of both the city and county of El Paso. Later Mr. Mann went to Austin, the capital of Texas, to meet with officials of the State who might be concerned.⁹

"After further study of the problem, and after negotiations with Mexican officials, into which discussions members of the Department of State entered fully, Ambassador Mann returned to El Paso to explain to local leaders the proposals our Government would submit to Mexico. For 3 days during February of 1963, Mr. Mann and Commissioner Friedkin consulted with local authorities, with owners of property in the Chamizal zone, and with others who would be affected by the proposed settlement. The results of these talks seemed to indicate that fully 90 percent of the people contacted in El Paso were favorable to the project as it had been developed to this point.⁷

"While negotiations and discussions continued, President Kennedy on March 6 said that the United States should erase the black mark resulting from its failure to carry out the decision of the arbitral tribunal that had tried to effect a compromise in 1911. At the same time, the Secretary of Foreign Relations in Mexico City, Manuel Tello, stated that an agreement was now within a millimeter of achievement.⁸ However, considerable more effort was necessary to work out the terms incorporated into the agreement.

"THE AREA IN DISPUTE

"The bone of contention that required the attention of the two Presidents, and the redoubling of effort on the part of many of their subordinates, is a small strip of territory lying on the border of the Rio Grande between the cities of El Paso, Tex., and Ciudad Juarez, Mexico. Taking its Spanish name from the scrubby plants that once covered the area, the entire Chamizal tract includes about 630 acres of land. It extends from the Levee Road and Charles Street on the west in a northeasterly direction to join Cordova Island which is the property of Mexico, as indicated on the map on pages 26 and 27 [not printed in the Record]. Thus, the western and southern boundary of the tract is formed by the present channel of the river; its northern boundary is the river as surveyed in 1852; its eastern boundary is Cordova Island, which, though belonging to Mexico, is located on the northern or American side of the river. Cordova Island contains about 386 acres.

"Several thousand persons live in the Chamizal zone. About 100 acres of the extreme western section are located within the downtown business district of El Paso. Two vehicular and pedestrian bridges cross the river in this area, connecting Stanton and Santa Fe Streets in El Paso with Lerdo and Juarez Streets in Ciudad Juarez, thus giving convenient access to the centers of both cities. This line of communication runs through the Chamizal for about three-tenths of a mile.

"Looking at this small strip of land on the map and taking into account its relatively limited economic value, as the interests of nations go, one might reasonably conclude that the task of determining its nationality should have been rather simple. But unfortunately, such a conclusion would be quite

erroneous. The hope for a rational and amicable agreement respecting the ownership of this narrow plot has been shattered time after time. High expectations of disposing of the issues involved were raised during the administrations of President Taft in 1913, President Coolidge in 1925, President Hoover in 1931-33, and during the terms of F. D. Roosevelt, Truman, and Eisenhower. But in no instance could the baffling enigma of the Chamizal be resolved.

"The Capricious Rio Grande

"In some respects the failure may be ascribed to the limitations of diplomacy and to the stubborn persistence of nationalistic amour-propre on both sides of the Rio Grande, as we shall presently see in detail. But, in addition, we must recognize that the forces of nature have played a leading role in this international drama. Like the witches in 'Macbeth,' these forces seem to have brewed an evil influence destined to defeat the best of human intentions—a striking example of the mastery of matter over mind. The physical causes of the trouble can be traced directly to the vagaries of the Rio Grande. Never noted for consistency in staying within the low banks along much of its course, the river seems to have taken a special delight in wandering from its bed as it flowed through the level terrain in the Pass of the North. As one writer pointed out:

"Sometimes, worn thin by drought and bled by irrigation, it [the Rio Grande] is not a river at all but only a wide strip of white sand baking and glaring in the sun. It becomes an impressive stream only in times of flood and then it runs in a red torrent often half a mile wide, lifting an angry crest of sandwaves, devouring its own banks, earth trees and all, as though in a furious effort to carry away the whole country and dump it into the sea."⁹

"The river rises in the Rocky Mountains of southern Colorado and flows for about 2,000 miles on its way to the Gulf of Mexico. It is estimated that the total effective drainage area of the Rio Grande is 177,500 square miles.¹⁰ For part of its journey to the sea, it pushes its way through miles of a broad sandy valley, where, before the building of Elephant Butte Dam in 1916 and Caballo Dam some 20 years later, it twisted and doubled upon itself like a great sea serpent. For centuries it coiled and recoiled in the shifting sands of the semiarid regions.

"Throughout its history, the great river has not always been friendly to man. Sometimes during a period of drought it has failed him altogether, and at other times of great flood it has washed away what he has built or planted. In spite of its treacherous character, however, crops have been grown in its valley for perhaps a thousand years. Probably the oldest irrigation in the United States was that of the native Indians found by the Spaniards when they entered the valley of the Rio Grande in New Mexico in the middle of the 16th century.¹¹

"In 1827 when Jose Ponce de Leon received from Mexico his famous land grant that is now the heart of downtown El Paso, the river flowed in front of his house, considerably north of its present course. It wound through and across the area now occupied by the principal streets of the business district—Mills, San Antonio, and Magoffin—and continued on eastward through Manzana, Stevenson, and Rosa, passing along the present site of the Standard Oil and Texaco refineries, and on toward the town of Ysleta. At that earlier time all of this property was within Mexico. The Chamizal extended from the northern banks of the river southward

to Calle del Chamizal in El Paso del Norte, now called Calle Mejia in Ciudad Juarez. Since colonial times this extensive area has been occupied by the Spanish and Mexican settlers and their descendants. Eventually the river was to shift its course southward, flooding and overflowing, forming and leaving various beds—all to the discomfort and dismay of the increasing population of the community.¹²

"The Rio Grande as boundary

"In spite of the instability of the river as a boundary, leaders in the United States have long looked to the Rio Grande as a natural line defining our western limits. Since 1804 when Thomas Jefferson decided that the Rio Grande should be claimed as the western boundary of the Louisiana Purchase, the river has held an important place in international affairs.¹³ The early leaders of Texas had a similar fixation on the river. At its first session in 1836 the Congress of the Texas Republic set the southern boundary of the new nation at the Rio Grande.¹⁴ Following the war of 1845 between the United States and Mexico, which was waged essentially over territorial interests and claims, the Rio Grande assumed greater importance than ever before, since it was designated as the permanent boundary between the two nations. The significant position of the river was indicated in article V of the Treaty of Guadalupe Hidalgo of 1848:

"The boundary line between the two Republics [the United States and Mexico] shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico; until it intersects the first branch of the river Gila; (or, if it should not intersect any branch of that river, then to the point of said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; then across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean."¹⁵

"Recognizing the need to define more precisely the course of the river, the framers of the treaty of 1848 provided for a Boundary Commission, 'who before the expiration of 1 year from the date of exchange of ratifications of this treaty shall meet at the Port of San Diego and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution.

"If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do

¹² Cleofas Calleros, "El Chamizal—Que Es?" (El Paso, 1963), 4.

¹³ American State Papers, Mar. 31, 1804.

¹⁴ Laws of the Republic of Texas, 1st Cong., 1st sess., 1836 (Houston, 1837), 133-34.

¹⁵ U.S. Statutes at Large, 922, art. V. Hereafter cited as statutes.

⁹ Ibid., July 18-22, 1962.

⁷ Ibid., Feb. 19-24, 1963.

⁸ Ibid., Mar. 7, 1963. See also El Fronterizo (Juarez), July 3, 1962; July 22, 1962; Aug. 14, 1962; June 5, 1963.

⁹ H. Ferguson, Rio Grande (New York, 1933), 3.

¹⁰ H. Rept. No. 359, 71st Cong., 2d sess., 9233.

¹¹ Ibid.

promise to each other, that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship, in which the two countries are now placing themselves: using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved, shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such differences should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case."¹⁰

"The Boundary Commission, on which both the United States and Mexico were represented, got off to a disappointingly slow start. For various reasons, its first meeting at San Diego, Calif., did not occur until 17 months after the treaty was signed. Various difficulties plagued its work from the beginning. It suffered from inadequate funds, supplies, and military protection. Errors in the prescribed maps caused much controversy between the representatives of the two countries. Finally, however, in December of 1856, the boundary survey was completed. It was to be accepted as the best delineation of the dividing line that could be produced."¹¹

"The Gadsden Purchase"

"In order to rectify the boundary in the area of the Gila River, the United States agreed to buy from Mexico, for \$10 million, a tract of land beginning some 40 miles north of El Paso. The territory involved was commonly designated as 'La Mesilla,' and the transaction became known as the Gadsden Purchase in 1853.¹² Before this agreement had been reached, the Boundary Commission had completed a survey in 1852, establishing a firmer line between the United States and Mexico in the Chamizal zone. The Treaty of Mesilla of 1853 sought to make the treaty of 1848 (Guadalupe Hidalgo) conform to the new boundary resulting from the Gadsden Purchase. Article I of the new treaty provided for a mixed commission for the 'settlement and ratification of a true line of division between the two republics; that line shall be alone established upon which the Commission may fix, their consent in this particular being considered decisive and an integral part of this treaty."

"The dividing line thus established shall in all time be faithfully respected by the two governments without any variation therein, unless by express and free consent of the two."¹³

"While the Boundary Commission and its surveyors were trying to establish an acceptable line, the Rio Grande refused to cooperate; it continued its erratic ways. Because of the sandy texture of the soil in the El Paso area and the torrential rains at certain seasons of the year, the eroding power of the river remained as always."

"A report by C. H. Ernst, major of engineers, U.S. Army, described the conduct of the river clearly:

"It is shifting from one position to another, eroding one bank and building up the opposite one, forming islands and bars, and then destroying them. The result of the

natural changes is most noticeable in a bend where the erosion of the concave shore is sometimes continuous for many years, as appears to have been the case at El Paso. * * * The maximum distance between the shore at El Paso of 1855 and that of 1885 is about five-eighths of a mile and the total area added to the American territory is about 490 acres."¹⁴

"Floods and treaties"

"The river changed its banks again between 1853 and 1863 because of a serious inundation. Then in 1864 occurred the worst flood in the memory of the residents. The people north of the river were obliged to take refuge in the heights of Stormville, now Rim-Road, in El Paso; and the inhabitants of El Paso del Norte (now Ciudad Juárez), to the south, moved in mass to the safer ground on which stood the Mission of Nuestra Señora de Guadalupe. Such floods continued periodically until the great dams were built up the river, in 1916 and later, to control them. The floods and resulting changes in the course of the river led the two riparian nations to seek a measure of security in a new agreement, the treaty of 1884. Articles I and II provided:

"The dividing line shall forever be that described in the aforesaid treaty and follow the center of the normal channels of the rivers named, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of the existing river bed and the opening of a new one."

"Any other change wrought by the forces of the current * * * shall produce no change in the dividing line as fixed by the survey of the International Boundary Commission of 1852."¹⁵

"In this treaty an attempt was made to reach a decision regarding the general rules of accretion and avulsion, to specify conditions under which artificial changes in the course of the river could be dealt with, and to provide for property rights respecting lands affected by the creation of new channels. The treaty, however, did not specify how these objectives were to be achieved."

"To meet increasing problems, including confusion over the boundary and uncertainty as to public and private titles to land, a new treaty was negotiated and signed. This convention of March 1, 1889, provided 'for the creation of a Boundary Commission with the authority to investigate and determine the merits of each contest.'¹⁶ Originally, the Commission was set up for a 5-year period then its life was regularly extended to 1910, when it was made permanent. The success of the Boundary Commission during its initial period was summarized by Anson Mills, U.S. Commissioner, as follows:

"During the 16 years of our active service (the revolution in Mexico in 1911 having put an end to activities) the Commission tried over 100 cases of all kinds, disagreeing only in the Chamizal case, and preserved the peace and quiet of the entire Rio Grande border for these long years, to the satisfaction of both Governments and the people of the two nations."¹⁷

"Under capable leadership, the Boundary Commission continued to improve conditions along the frontier. Its work in rectifying the channel of the river from El Paso to Fort Quitman should prevent any problem arising in the future in this section of

the boundary. In keeping with the treaty of 1933, the Boundary Commission has successfully undertaken a project of flood control costing \$6 million. The program has involved the assignment of 16,704.6 acres of land to the United States and 9,625.5 acres to Mexico. In all, 216 parcels of land have thus been exchanged."¹⁸

"The work of the Commission has been aided greatly by the construction of the Elephant Butte, Caballo, and Falcon Dams, which have done much to control the distribution and use of water along the river. Another large dam, Amistad, is scheduled for completion in 1968. The Commission has had to deal with many difficult technical problems, but it has been largely successful in defining and stabilizing the river frontier between the two neighboring nations. One problem, however, long defied solution: What could be done about the Chamizal? For one reason or another, every effort to deal with this highly perplexing problem bogged down in the sands of the shifting river or in the conflicts of diplomacy and national self-interest."

"The Chamizal issue emerges"

"As early as 1866 officials of both the United States and Mexico recognized the possibility that the devious ways of the Rio Grande could cause problems respecting the international boundary. The Secretary of Foreign Relations of Mexico, Sebastián Lerdo de Tejada, notified the American Secretary of State, William H. Seward, that Mexico was seriously concerned.¹⁹ About the same time Maj. W. H. Emory, U.S. Boundary Commissioner, called to the attention of Robert McClelland, Secretary of the Interior, the danger of a threatened avulsive change in the course of the river near El Paso. As a result of these reports, Attorney General Caleb Cushing drafted an opinion summarizing the principles of international law that applied. This opinion served as a reply to the Mexican Government and a statement of policy that the United States would consistently follow in subsequent negotiations.²⁰ Cushing's views were to figure prominently in the effort at arbitration in 1911."

"The issue over the Chamizal first became troublesome in 1894 when the Boundary Commission met to establish the dividing line over the bridges between El Paso and Ciudad Juárez.²¹ On learning of the move, the Mexican Secretary of Foreign Relations notified Washington that no one had been authorized to define a boundary between the two countries, but only between the two cities. The Secretary pointed out that the channel of the river had changed in area since the boundary was fixed in conformity with the treaty of 1848 and that the first question which must be decided was where the actual dividing line lay between the two countries. The Mexican authorities intervened to reserve the rights of Mexico, avoiding a possible later claim of the United States that the boundary agreed on was the line established over the bridges."²²

"On June 21, 1894, the two Boundary Commissioners agreed on a line over the bridges, but they considered it to be provisional only. A week later, on June 29, the government of President Díaz notified the United States that Mexico could not approve this line as the boundary between the two nations. The Mexican note referred to the treaty of 1889

¹⁰ United States Treaty Series (Washington, 1934), No. 864.

¹¹ Alberto María Carreño, México y los Estados Unidos de América (2d ed., Mexico, D. F., 1962), 274 ff.

¹² Charles A. Timm, "The International Boundary Commission" (Austin, 1941), 151-1961.

¹³ Chamizal appendix, I, 347-348.

¹⁴ Salvador Mendoza, "El Chamizal: Un Drama Jurídico y Histórico (Mexico, D. F., 1962), 11.

¹⁵ Ibid., art. XXI.

¹⁶ H. Rept. No. 247, 55th Cong., 2d sess., 55-56.

¹⁷ 10 Statutes 1031.

¹⁸ Ibid.

¹⁹ Chamizal Arbitration, appendix to the case of the United States of America (Washington, 1911), II, 759. Hereafter, Chamizal appendix.

²⁰ 24 Statutes, 1011, art. II.

²¹ 31 Statutes, 1936.

²² Anson Mills, "My Story" (Washington, 1921), 301.

that created the Boundary Commission and declared that the agreement did not authorize the Commission to make such provisional arrangements. The note also referred to a claim that had been filed by Pedro I. Garcia, alleging that a plot of land called the Chamizal had previously been a part of Ciudad Juarez, the title to which plot he held through Mexico, but that his land had been joined to the territory of the United States by a violent change in the course of the river. Since the claimant declared that the tract still belonged to Mexico, the Mexican Government insisted that the Boundary Commission examine and decide the case of the Chamizal before fixing the dividing line between Ciudad Juarez and El Paso.²⁹ In this manner, the question of the Chamizal, which was to become increasingly complex, was converted from a routine matter of resolving border problems due to changes in the river, a matter under the control of the Boundary Commission, into a serious diplomatic question requiring the attention of the foreign offices of the two countries.

"The second claim of the Mexican Government respecting the Chamizal occurred in 1897 after a flood had caused extensive damage in both El Paso and Ciudad Juarez. The people of the two cities demanded that something be done to prevent future losses from the uncontrolled waters of the river. As a result, the mayor of El Paso, Joseph Magoffin, and the Governor of Chihuahua, Miguel Ahumada, sought the permission of their respective national governments to straighten the channel of the river. The inhabitants of the two cities agreed to pay the cost involved—\$8,000. The U.S. Government readily accepted the proposal. Mexico agreed also, but on the condition that the territory north of the new channel should remain under Mexican sovereignty. The project was completed in 1899 with the full cooperation of the two city governments. As a result of this rectification, Cordova Island, which lies north of the present channel of the river, was created and was retained by Mexico.³⁰

"Once the Rio Grande was thus brought somewhat better under control, and occupation of the Chamizal was made physically safe, its population began to increase rapidly. In 1892 construction of the Church of the Sacred Heart and a parochial school was begun. The Chapel of San Ignacio de Loyola was erected in 1905. These religious and educational institutions naturally attracted more people to the area, many of whom built permanent houses of brick. Within a short time much of the Chamizal was integrated into the city of El Paso and designated as the second ward. Legally, however, the owners of property in the area never were completely secure in their possession. Many deeds issued since 1900 have referred to the cloud on the titles resulting from the fact that the nationality of the property has been in dispute.³¹

"Litigation and diplomacy

"The problem of nationality lay dormant for some time, but it was brought to life again in 1907 when the El Paso and North-eastern Railway obtained a judgment in the Federal circuit court, authorizing the condemnation of land in the Chamizal for a right-of-way. On March 21, 1907, the Mexican Government protested to the American Secretary of State, Elihu Root, that the Chamizal was sub judice (in litigation) and the 'area had unquestionably been Mexican in other times.'³²

"Secretary Root acted promptly on March 29 by addressing a letter to the Attorney General of the United States which reviewed the legal issues involved and asked for a stay of execution of the court's order. Root pointed out that the Chamizal was in dispute between the United States and Mexico and that the Boundary Commission, which had jurisdiction over the matter, had not yet rendered a decision. If the area was still Mexican, as it undoubtedly was in other times, the incompetence of the U.S. court would be evident. Since the court apparently did not know the facts mentioned, its decision had denied the sovereignty of Mexico and asserted the dominion of the United States. The effort to dispose of property that was involved in negotiations created a serious difficulty and placed the United States in an untenable position, since it was unjustifiable, after having agreed with Mexico to submit the question respecting the nationality of the tract to a special tribunal, to decide the issue ex parte and on our own account. Root therefore requested that the Attorney General instruct the Federal marshal at El Paso to desist at once from executing the order of the court and that the Federal district attorney be notified to suspend any further action in the case. The intervention of Secretary Root was effective: the interest of Mexico in respect to the Chamizal was thus recognized and protected.³³

"In 1909 another local incident occurred that had diplomatic repercussions in the national capitals of Mexico and the United States. When the city of El Paso undertook to install a waste-disposal plant in the Chamizal, Mexico officially protested.³⁴ A series of notes was exchanged in 1910 between the Mexican Ambassador in Washington, Francisco León de la Barra, and the U.S. Secretary of State, Philander C. Knox.³⁵ The arguments advanced by each side in this correspondence were fully reviewed in the arbitral proceedings of 1911 and they will be taken up later in that connection.

"By now the controversy over the little strip of land in south El Paso, by no means the most desirable part of the city, had become quite serious. Both Governments recognized that the issue could not be settled by the exchange of diplomatic notes or by action of the binational Boundary Commission, each member of which would almost certainly continue to support the claims of his own Government. A new procedure was clearly called for, but what should it be?

"In search of a procedure

"As early as 1897 the two members of the Boundary Commission had agreed on at least one thing respecting the Chamizal. Since they realized that they could not dispose of the knotty questions involved, they mutually concluded that it would be well to add a third member to the Commission who should act as an arbiter in deciding this single issue.³⁶ The Department of State at Washington agreed to this recommendation, but the Mexican Secretary of Foreign Relations rejected it and declared that the case should be submitted to arbitration.³⁷ He proceeded to name several heads of state who might be suitable to serve on a special court of arbitration. To this proposal, officials at Washington replied that Mexico was broadening the question beyond the commitments of the United States—that the problem was not one of international law but of applying the ordinary rules respecting the effect upon a borderline of the change in the course of a dividing river. Wanting to avoid the formality of a new treaty and arbitral proceed-

ings, the Department of State recommended the addition of a third member to the Boundary Commission, either American or Mexican, on whom the two nations could agree, to dispose of the matter.³⁸

"The Mexican foreign office, however, referred to article II of the treaty of 18 9, which provided for only two commissioners, and denied that a third member would have legal competence to render a decision binding on the two Governments.³⁹ The United States did not reply to this last note, and the question lay at rest until Mexico revived it in July 1907, by submitting a new proposal. This time, the Mexican Government sought a compromise. Using article XXI of the treaty of 1848 and article VII of the Convention of 1889 as a base, Mexico recommended an ad hoc mixed commission consisting of the two members of the Boundary Commission, plus a third member to be named by the Government of Canada, who would have the authority to decide the questions on which the other two Commissioners could not agree. The decision of the mixed commission was to be definitive and unappealable.⁴⁰

"While the Governments delayed a decision on the manner of dealing further with the dispute, they explored the possibilities of an exchange of territory. In a note of December 12, 1907, Mexico offered to trade the Bosque, the Cordova, and El Chamizal for the Isla de San Elizario and El Horcon.⁴¹ The Mexican note also claimed that the Chamizal lay south of the course of the river of 1852, and therefore was in Mexican territory, a point the United States was not willing to concede.

"In his communication of January 15, 1910, the Mexican Ambassador, de la Barra, insisted on a new treaty that would recognize the claims of Mexico to the Chamizal—or failing this, that the two nations without delay submit the issue of ownership to arbitration.⁴² In reply, Secretary of State Knox, on March 22, accepted in principle the Mexican proposal.⁴³ He suggested that each country submit a list of three Canadian jurists and that from these six, the two litigants select an umpire to act with the two regular members of the Boundary Commission in deciding title to the Chamizal. In the event the two nations could not agree on the umpire, the Government of Canada would name one of the six, who would serve as the third member of the mixed commission, with the right to vote. On June 17 Secretary Knox submitted to the Mexican foreign office the initial draft of a special treaty of arbitration, or a compromise, providing for the membership of the arbitral body, delimiting the territory in dispute, and defining the issue to be settled. Mexico agreed in principle to the terms proposed, and both Governments ratified the treaty on which arbitral action would be based.⁴⁴

"Agreement on arbitration

"Thus the two nations agreed that the case of the Chamizal would be decided in accordance with the well-established principles and procedures of international law. The method of settlement that the two Governments chose was used frequently by the ancient Greeks, and occasionally in medieval Europe. However, its use had lapsed for several centuries, and the process was not revived until the Jay Treaty of 1795, nor was it much in vogue until after the settlement of the Alabama Claims in 1872. In referring to the procedure as it was employed before the 17th century, one writer has ob-

²⁹ Ibid., 355.

³⁰ Ibid., 361-362.

³¹ Ibid., 368-371.

³² Ibid., 365-368.

³³ Ibid., 398-404.

³⁴ Ibid., 421-424.

³⁵ 36 Statutes, pt. 2, 481.

²⁹ Chamizal appendix, I, 347-348.

³⁰ Department of State, Proceedings of the International Boundary Commission, United States and Mexico (Washington, 1903), I, 149-167.

³¹ Calleros, "El Chamizal—Que Es?" 10.

³² Chamizal, app., II, 701.

³³ Ibid., I, 454.

³⁴ Ibid., 508.

³⁵ Ibid., 433.

³⁶ Ibid., 347-348.

³⁷ Ibid., 353.

served that it is often very difficult, sometimes impossible, clearly to separate cases of mediation from those of arbitration, either because the terminology was not very definite, or the expressions used were equivocal, or because the distinction was not clear to the minds of the negotiators.⁴⁵

"Many writers on international law have called attention to the distinction between arbitration and mediation. As one has noted: 'The essential point is that arbitrators are required to decide the difference; that is, to pronounce sentence on the question of right. To propose a compromise is not within their province, but in the province of a mediator.'"⁴⁶ John Bassett Moore has explained the distinction by saying: 'Arbitration is a settlement of international disputes, according to legal rules and methods, by arbiters chosen by the disputant parties themselves. Arbitration is a legal procedure. Mediation is an advisory, arbitration a judicial function.'⁴⁷

"As a result of long usage, the arbitral process has become well established, and the procedures used are as fixed as those of a court of law. One point recognized in international law is the need to have a clearly defined agreement or compromise so that there may be no question as to the subject in dispute or the authority of the tribunal.⁴⁸ The convention of 1910 appears to have fulfilled this requirement. Article I specifically located the Chamizal tract, and about this point there was no dispute.⁴⁹ Article III stated that the Commission should decide 'solely and exclusively as to whether the international title to the Chamizal tract is in the United States or in Mexico.'⁵⁰ The Convention also specified that the decision 'rendered unanimously or by a majority vote of the Commission shall be final and conclusive.'⁵¹ The preamble stated that the decision should be in accordance with the various treaties and conventions existing between the two countries and in accordance with the principles of international law.⁵²

"In compliance with article II of the convention, Eugene Lafleur of Canada was chosen as presiding Commissioner; Fernando Beltrán y Puga was named to represent Mexico, and Anson Mills, the United States.⁵³

"Mexico submits her case"

"On May 15, 1911 the Arbitration Commission met in the Federal courthouse at El Paso and it rendered its decision approximately a month thereafter.⁵⁴ In keeping with the terms of the convention of June 24, 1910, each Government submitted to each Commissioner a printed argument setting out the points it relied on in its case and its counterclaim.⁵⁵

"Mexico claimed that the boundary between the two nations was a fixed and in-

variable line as determined by the treaties of 1848 and 1853, and that the boundary was not subject to changes caused by accretion. The Mexican argument called attention to the fact that the Treaty of Mesilla was signed in 1853 to make the terms of the treaty of 1848 conform to the new boundary as a result of the Gadsden Purchase. Article I of the treaty of 1853 provided for a mixed commission for the 'settlement and ratification of a true line of division between the two Republics; that line shall be alone established upon which the Commission may fix, their consent in this particular being considered decisive and an integral part of this treaty.'

"The dividing line thus established shall in all time be faithfully respected by the two Governments without any variation therein, unless by express and free consent of the two."⁵⁶

"It was on the interpretation of these two treaties that Mexico based its claim that the boundary was at the place located by the survey of 1852, which, the Mexicans insisted, would mean that the Chamizal tract was Mexican territory regardless of the manner by which the river had changed its bed since 1852.⁵⁷

"The legal arguments of Mexico had been developed earlier by Ambassador de la Barra, who had argued that by the terms of the treaties, the International Boundary Commission was authorized to determine the boundary, that the decisions of the Commissioners were to have the same force as the treaties themselves, and that such decision could not be modified except by the consent of both Governments. He had said: 'One of the direct consequences of that agreement is that the boundary was fixed in such a manner that it could in no wise be affected by a change in the course of the Rio Bravo or Grande, no matter what the cause might be.'⁵⁸ To emphasize his point, he had described the bed of the river by dividing it into three zones. The middle zone, he had declared, ran through three canyons; the upper and lower zones were the portions in which the 'river runs torrentlike across alluvium valleys, whereby its course is made unstable and subject to constant variations.'⁵⁹ As a result, he had concluded:

"The logical deduction from the foregoing data is that the provisions of the convention of 1884 were not directly applicable to the first and third zones of the Rio Grande, in those regions where its course had changed, since the invariable and fixed boundary line determined by the treaty of 1853 already deviated from the course of the river in 1884.

"The position of the dividing line during the period from 1853 to 1884 is clearly determined by the first of the conventions named * * * the line so established was in no wise affected by a change in the course of the river, whatever might be the cause of such a change. That is to say, from 1853 to 1884—and it should, as I will show, be so held from that to this date—all lands north of the dividing line established by the Commissioners in conformity with the treaty of 1853, were and remain American and all those south of that line are and remain Mexican."

"The provisions of the convention of 1884 could only be applicable to cases which might arise subsequently; but not to those which had occurred before, because they came under the rule stipulated in the treaty of 1853.

⁵⁰ 10 Statutes, 1031, art. I.

⁵¹ Comisión Internacional de Límites entre México y los Estados Unidos, Sección Mexicana, "Memoria Documentada del Juicio del Arbitraje del Chamizal" (México, D.F., 1911), 3 vol. passim. Hereafter, Arbitraje.

⁵² Chamizal, app. I, 405-406.

⁵³ Ibid., 407.

"The convention of 1884 could not and cannot, like that of 1905, be applied to cases antecedent to the first of those two dates, which were regulated by the treaty of 1853.

"That some of the clauses of a convention had been superseded by the provisions of a subsequent treaty, cannot in the least impair or destroy rights created by the first instrument unless there be an express agreement to that effect in the later compact."⁶⁰

"The communication that Señor de la Barra submitted to the Arbitration Commission ended with a summary of the correspondence between Mexico and the United States relating to the boundary, which correspondence, in his opinion, proved that the United States had also agreed to this principle of a fixed and invariable line.

"Reply of the United States"

"The United States replied by summarizing the whole correspondence on the fixed-line theory and pointed out that 'during the earlier portion of the period from 1853 to 1884, the Government of Mexico apparently shared the views of the United States; that during the later period it apparently manifested at times a disposition to adopt the fixed-boundary theory; and it would seem that partially as a result of discussions growing out of this attitude on the part of the Government of Mexico, the convention of 1884 was negotiated and signed, whereby the two Governments agreed on a formal interpretation of the boundary treaties in the sense of Attorney General Cushing's opinion.'⁶¹

"Mexico had also contended that since the Chamizal tract had been formed before 1884, the interpretation of that treaty in no way affected the title of that tract.⁶² The position of the United States was that a true interpretation of the treaties of 1848 and 1852 meant that in accordance with international law governing river boundaries, the boundary moved with the river when it changed its location by accretion; that between 1852 and 1911 the river moved south by accretion; and that under well-established principles of law, the present channel of the river should remain the boundary.

"According to the rules of international law, as the United States interpreted them, accretion occurs when a river eats into its opposite bank, thus moving in the direction of the receding bank. Conversely, avulsion occurs when the river suddenly breaks out of its old channel and makes a new one; the old river bed can be easily seen. In the Chamizal tract no abandoned river beds were discernible between 1852 and 1911. The United States insisted that the various reports, documents, and testimonies before the tribunal proved that 'all the alterations in the banks and course of the river have been effected by causes which are natural to the Rio Grande, that the alterations have been through slow and gradual erosion and deposit of alluvium and that all the requirements specified in article I of the treaty of 1884 have been met at all times so that the dividing line has constantly followed the center of the normal channel of the river.'⁶³

"The United States interpreted the treaty of 1884 as contemplating only two possible types of change, one by erosion, and the other by avulsion. It pointed out that the expression 'slow and gradual' modifying 'erosion' was in conformity with the doctrine laid down by Attorney General Caleb Cushing in his answer to a request from the Secretary of the Interior as to the effects of changes in the course of the river on the location of the boundary. In his opinion, given

⁶⁰ Ibid., 407-408.

⁶¹ Chamizal, U.S. case (Washington, 1911), 37.

⁶² Arbitraje, passim.

⁶³ Chamizal, "Argument of the United States of America" (Washington, 1911), passim. Hereafter, Chamizal argument.

⁴⁵ J. B. Moore, "History and Digest of the International Arbitrations to Which the United States Has Been a Party" (Washington, 1898), V, 4831. Hereafter, Moore, Digest.

⁴⁶ L. F. L. Oppenheim (ed.), "The Collected Papers of John Westlake on Public International Law" (London, 1914), I, 354. Hereafter, Westlake.

⁴⁷ Moore, Digest, VII, 25.

⁴⁸ E. Vattel, "The Law of Nations of the Principles of International Law Applied to the Conduct and to the Affairs of Nations and Sovereigns" (Fenwick tr., Washington, 1916), II, 277.

⁴⁹ 36 Statutes, pt. 2, 2481, art. I.

⁵⁰ Ibid., art. III.

⁵¹ Ibid.

⁵² Ibid., art. V.

⁵³ Mills, "My Story," 294.

⁵⁴ Chamizal arbitration, "Minutes of the International Boundary Commission: Award; Dissenting Opinions; Protest of the Agent of the United States" (Washington, 1911), 35-36. Hereafter Chamizal award.

⁵⁵ 36 Statutes pt. 2, 2481, art. V.

in 1866, Cushing quoted from many authorities on international law to prove his theory, which was as follows:

"Whatever changes happen to either bank of the river by accretion on the one, or degradation on the other, that is, by the gradual, as it were, insensible accretion or abscission of mere particles, the river as it runs continues to be the boundary. One country may in process of time, lose a little of its territory, and the other gain a little, but the territorial relation cannot be reversed by such imperceptible mutations in the course of the river. The general aspect of things remains unchanged. And the convenience of allowing the river to retain its previous function, notwithstanding such insensible changes in its course, or in either of its banks, outweighs the inconvenience, even to the injured party, involved in a detriment, which happening gradually, is inappreciable in the successive movements of its progression."

"But on the other hand, if, deserting its original bed, the river forces for itself a new channel in another direction, then the nation, through whose territory the river thus breaks its way, suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary, and that boundary remains in the middle of the deserted riverbed. For, in truth, just as a stone pillar constitutes a boundary, not because it is a stone, but because of the place in which it stands, so a river is made the limit of nations, not because it is running water bearing a certain geographical name, but because it is water flowing in a given channel, and within given banks, which are the real international boundary. Such is the received rule of the law of nations on this point, as laid down by all writers of authority."⁶⁴

"The Mexican answer was that even if the boundary should be determined according to rules defined in the treaty of 1884, the disputed tract would still be Mexican territory, for 'slow and gradual' qualified the meaning of 'corrosion.' For some reason, the Mexican translation used the word 'corrosion,' rather than 'erosion,' as is found in the American original, meaning that the movement of the river must be similar to a corrosive change, as the rusting of iron."⁶⁵

Claims and counterclaims

"In addition to the issues of erosion and avulsion, a third point argued in the Chamizal case was that of prescription. The United States claimed international title to El Chamizal by reason of the undisturbed, uninterrupted, and unchallenged possession of 'said territory by the United States of America since 1836.'⁶⁶ Prescription in international law may be defined as 'the acquisition of sovereignty over territory through continuous and undisturbed exercise of sovereignty over it.'⁶⁷ This concept refers to long-continued possession in the face of a title held earlier by another. In the case of the Chamizal, the United States claimed a dual prescription, 'first, to the Rio Grande as a water boundary since 1836; second, to the Chamizal tract since it was formed, beginning in 1852.'⁶⁸ The question of how long a second country must occupy a territory in order to have clear title has not been clearly defined in international law. From 30 to 50 years has been given as the usual time of inactivity by the first nation.⁶⁹ The United States contended that Texas and the United States had had complete control over the

tract from 1836 to 1895, when Mexico filed its first claim to the tract.⁷⁰ Mexico answered this contention by pointing out that the changes in the boundary had not been made successively but at times of great floods, and that on each occasion when such a change had occurred, the Mexican Government had called the attention of the United States to that section of the boundary, asking that notice be taken of the change."⁷¹

"After considering the arguments presented by both sides in the controversy, the Arbitration Commission voted on six questions. All three Commissioners agreed that the United States had no claim to the Chamizal tract on the basis of prescription. The Presiding Commissioner, Lafleur, and the American Commissioner, Mills, voted together on two issues: against the fixed-and-invariable-line theory, and for the theory that the treaty of 1884 applied to all changes in the river subsequent to the survey of 1852. The Mexican Commissioner, Puga, and the Presiding Commissioner voted together on three issues: that the whole of the Chamizal tract was not formed by slow and gradual erosion and deposit of alluvium within the meaning of article I of the convention of 1884; that before 1864 the formation was due to slow and gradual erosion; and that between 1864 and 1868, the formation was not due to slow and gradual erosion."⁷²

"The American Commissioner refused to vote on the fifth question for two reasons. First, he claimed that by answering the question, he would be recognizing the authority of the Commission to divide the tract, a power which he insisted the Commission did not have, since article III of the convention of June 24, 1910, provided that 'the Commission shall decide solely and exclusively as to whether the international title to the Chamizal tract is in the United States of America or in Mexico.'"⁷³ Second, he claimed that the question implied the recognition of a method of change in the riverbed due to means other than those provided for by the treaties between the United States and Mexico.⁷⁴ On the last question, the American Commissioner refused to vote because 'the location of the river in 1864 is wholly obliterated and its position can never be reestablished in any one of the points of its former location, and, therefore, even if the Commission were empowered to render a decision segregating that portion of the tract formed after 1864, provided the channel of 1864 could be located, a decision to this effect under the present circumstances when the channel can by no possibility be relocated, is void because it is indeterminate, indefinite, and impossible of accomplishment.'"⁷⁵

The award and its rejection

"The convention of 1910 had provided that the decision 'whether rendered unanimously or by a majority vote of the Commissioners shall be final.'"⁷⁶ All three Commissioners had voted together on one question, the U.S. Commissioner and the Presiding Commissioner on two, and the Mexican Commissioner and the Presiding Commissioner on three. Adding up the score, the result was a majority vote in favor of Mexico. Accordingly, on June 15, 1911, the Commission announced its award as follows:

"The international title to the portion of the Chamizal tract lying between the middle of the bed of the Rio Grande as surveyed by Emory and Salazar in 1852 and the middle of said river as it existed before the flood of 1864, is in the United States of America,

and the international title to the balance of said Chamizal tract is in the United States of Mexico."⁷⁷

"In the opinion of Lafleur, the river had moved by slow erosion before 1864 and by rapid erosion after that date. Therefore Mexico should have title to the tract south of the riverbed as it existed in 1864.⁷⁸ The position of the American Government, however, was that the contention of Mexico to the effect that the adjectives 'slow' and 'gradual' justified a special concept of erosion at El Chamizal was not consistent with international law."

"The Americans insisted that words must be understood in accordance with their subject matter; therefore, since 'erosion' and 'avulsion' were the only types of changes specified in the treaty, it was logical to deduce that the words 'slow and gradual,' which modified 'erosion,' indicated that no other form of erosion was possible, and merely distinguished between a 'slow and gradual' process as erosion, and a 'rapid process' as avulsion. 'Gradual' and 'rapid' might represent a difference in degree of erosive action but did not constitute two kinds of erosive action. It seemed clear to the American Government that if Mexico and the United States had intended to advocate a type of change unknown to international law, a definite statement to that effect would have been included in the correspondence relating to the treaty. There was no evidence of such correspondence. Furthermore, if three kinds of changes were recognized, why mention only two in the treaty? The treaty provided for locating the boundary as a result of 'slow and gradual' erosion and as a result of 'avulsion,' but it did not mention 'rapid erosion.'"⁷⁹

"As indicated in the minutes of the meeting of June 16, 1911, the Commissioners of the United States and Mexico were to submit their opinions on the points of the award from which they dissented. The Mexican Commissioner, Senor F. Beltrán y Puga, based his dissenting opinion on two points: first, that the findings of the majority were not supported by the record and the argument respecting the fixed and invariable line of 1852; and, second, that the convention of 1884 was not retroactive.⁸⁰ Mr. Mills advanced no new argument but reiterated the points he had previously submitted. He gave his reasons for dissenting as follows:

"First, the Commission is wholly without jurisdiction to segregate the tract or to make other findings concerning the change at El Chamizal than 'to decide whether it has occurred through avulsion or erosion, for the effects of articles I and II of the Convention of November 12, 1884' (and article IV of the convention of 1889). Secondly, because * * * the convention of 1884 is not susceptible to any other construction than that the change of the river at El Chamizal was embraced within the first alternative of the treaty of 1884. And thirdly, because * * * the finding of the award is vague, indeterminate, and uncertain in its terms and impossible of execution."⁸¹

"To summarize, Mexico claimed the entire tract by right of a 'fixed and invariable line.' The United States claimed the entire tract by right of a 'fixed and invariable principle of changes made by erosion.' The Presiding Commissioner divided the tract between the two nations. Later Mexico agreed to accept the decision of Lafleur;⁸² but the American Commissioner dissented, and his opinion was sustained by the Department of

⁶⁴ Opinions of the Attorney General of the United States (Washington, 1852), XIII, 175.

⁶⁵ Chamizal, app. I, 186-187.

⁶⁶ Chamizal argument, 113.

⁶⁷ L. F. L. Oppenheim, "International Law" (4th ed., London, 1928), I, 309.

⁶⁸ Chamizal argument, 114.

⁶⁹ S. Pufendorf, "Of the Law of Nature and Nations" (Oxford, 1703), IV, 385.

⁷⁰ Chamizal argument, 116.

⁷¹ Arbitraje, 34.

⁷² Chamizal award, 34.

⁷³ 36 Statutes, 2, 2481, art. III.

⁷⁴ Chamizal award, 4.

⁷⁵ Ibid.

⁷⁶ 36 Statutes, 2, 2481, art. III.

⁷⁷ Chamizal award, 4.

⁷⁸ Ibid., 30.

⁷⁹ Ibid., 42.

⁸⁰ Ibid., 49.

⁸¹ Ibid., 36.

⁸² Carreño, "México y los Estados Unidos," 383-392.

State of the United States.⁸² The President of the United States, William H. Taft, expressed the same thought in his message of December 7, 1911, by saying: "Our arbitration of the Chamizal boundary question with Mexico was unfortunately abortive, but with earnest efforts on the part of both Governments which its importance commands, it is felt that an early, practical adjustment should prove possible."⁸³

"The New York World, commenting on the decision of the Arbitration Commission in 1911, referred to the 'comic-opera conditions in El Paso,' and concluded:

"The decision of the Chamizal Arbitration Commission apportioning between Mexico and the United States a 3-mile strip of land five blocks wide, included in the city limits of El Paso, shows an astuteness worthy of the celebrated tariff ruling on frog legs. The difference between tweedledum and tweedledee was never before so accurately defined in diplomacy. By crossing a street or turning a corner, citizens of El Paso will find themselves under the dominion of another nation and what that will mean in the matter of conflict of laws and encouragement of license may be readily understood. A comic-opera librettist never created a more diverting situation."⁸⁴

"Legality of the U.S. position

"The problem of the Chamizal is of particular interest in the field of international law because it represents an instance in which a nation rejected an arbitral award. One of the prerequisites of arbitration is that the parties bind themselves to accept the decision of the judges. However, it seems to be a generally accepted principle of international law that under certain conditions the award may be repudiated; since 'an award outside the limits of the submission is not binding, for in such a case the tribunal acts in excess of its powers.'⁸⁵ By the terms of the Chamizal award, the tract was divided between the two litigants. This action, the United States claimed, was not in compliance with article III of the convention of 1910, 'which provided that the Commission shall decide solely and exclusively as to whether the title to the Chamizal tract is in the United States of America, or in Mexico,' and for that reason, the U.S. Government felt it was justified in not accepting the decision of the Arbitral Commission.⁸⁶

"In reaching this conclusion, the United States followed the reasoning of leading authorities on the subject. Charles Calvo enumerates six situations in which parties are justified in refusing to accept and execute arbitral judgments. These are:

"1. Where the award was unauthorized, or rendered outside of and beyond the terms of agreement;

"2. Where the arbitrators were under a legal or moral incapacity, absolute or relative, as where they were bound by previous engagements, or had in the formulation of their conclusions a direct interest unknown to the parties who chose them;

"3. Where the arbitrators or one of the parties had not acted in good faith, as when the arbitrators were bought or corrupted by one of the parties;

"4. Where one of the parties was not heard or enabled to vindicate his rights;

⁸² Department of State, "Papers Relating to the Foreign Relations of the United States" (Washington, 1870-1940), 1911, 598. Hereafter, "U.S. Foreign Relations."

⁸³ J. D. Richardson (comp.), "Messages and Papers of the Presidents" (New York, 1914), XVIII, 8038.

⁸⁴ Quoted in the El Paso Times, June 27, 1911.

⁸⁵ C. C. Hyde, "International Law Chiefly as Interpreted and Applied by the United States" (Boston, 1922), I, 581.

⁸⁶ 36 Statutes, 1910, art. III.

"5. Where the award bore on things outside the submission;

"6. Where the tenor of the award was absolutely contrary to the rules of justice and hence could not be the object of a compromise."⁸⁷

"Among the rules proposed by the Institute of International Law at its session in Geneva in 1874 and at its session at The Hague in 1887 is one relating to the requirement that an award be carried out. The rule is that the award 'must pronounce in accordance with the provisions of the agreement to arbitrate.'⁸⁸ J. B. Moore makes the same point when he says: 'The sentence of arbitration shall be void in case of the avoidance of the agreement to arbitrate, or of an excess of power, or of proved corruption of one of the arbitrators, or of an essential error.'⁸⁹

"Secretary of State Bayard, in 1838, expressed the policy of the United States in regard to the validity of awards as follows:

"No matter how solemn and how authoritative may be a judgment, it is subject to be set aside by the consent of the parties. To the awards of international commissions * * * this position applies with particular force, since it is a settled principle of international law that no sovereignty can in honor press an unjust or mistaken award even though made by a judicial international tribunal invested with the power of swearing witnesses and receiving or rejecting testimony."⁹⁰

"There have been many instances in which states have recognized the right to reject awards of international tribunals. An outstanding example was the rejection of the award in the northeastern boundary arbitration. The convention of September 12, 1827, between the United States and Great Britain provided that the points of difference over the boundary were to be submitted to some friendly sovereign or state and that the decision should be considered final and conclusive. The arbitrator, the King of the Netherlands, held that 'neither the line claimed by the United States nor the line claimed by Great Britain so nearly answered the requirements of the treaty that a preference could be given to the one or to the other.' He therefore abandoned as impracticable the attempt to draw the line described in the treaty, and recommended a line of convenience. Since the line recommended did not conform to a line claimed by either of the parties and, therefore, was not within the special jurisdiction given the arbitrator, the Senate of the United States by a vote of 38 to 8, resolved that the award was not obligatory. The consensus seemed to be that the arbitrator had not confined his decision to the limits prescribed by the compromise, and that, therefore, either state was justified in not abiding by it."⁹¹

"Westlake, in discussing this award, says that 'the arbitrator did not adjudicate on the respective lines proposed by the parties, but proposed an intermediate one as a compromise, which the United States was not bound to accept and did not accept.'⁹² Calvo, referring to the same case, says that the arbitrator, 'instead of laying down a true line, left this in suspense and confined himself to suggesting a basis for an entirely new and hypothetical arrangement, which the parties agreed in disregarding.'⁹³

"Precedents and conclusions

"When in October of 1910, the Permanent Court of Arbitration at The Hague, in the

⁸⁷ Charles Calvo, "Le Droit International" (Paris, 1896), III, 485, 486. Hereafter, Calvo.

⁸⁸ Moore, Digest, V, 5058.

⁸⁹ Ibid., 5062.

⁹⁰ U.S. Foreign Relations, 1837, 608.

⁹¹ Moore, Digest, VII, 5960.

⁹² Westlake, 415.

⁹³ Calvo, III, 485.

case of the United States against Venezuela concerning the Orinoco Steamship Co., annulled a previous arbitration award, the Court pointed out that 'excessive exercise of power may consist not only in deciding a question not submitted to the arbitrators, but also in misinterpreting the express provisions of the agreement in respect of the way in which they are to reach their decisions, notably with regard to the legislation or principles of law to be applied.'⁹⁴ In an earlier case decided in 1884, although the award was in favor of the claim of the United States in a dispute with Haiti, the Secretary of State held that the arbitrator had 'misconstrued his powers,' and therefore the award was not binding.⁹⁵

"If these statements of writers on international law and opinions of courts and arbitral tribunals are accepted as precedents, the United States had the legal right to declare void the award which divided the Chamizal tract. In the case of the Chamizal the subject in dispute was clearly defined, the question was clearly stated, and since the disputed tract was given neither to the United States nor to Mexico, the award rendered was outside of and beyond the terms of the convention of 1910, which controlled the proceeding.

"On the question of jurisdiction over the Chamizal tract, Mexico voted it belonged to Mexico, the United States voted it belonged to the United States, and the third Commissioner, Lafleur, voted that it should be divided between the two nations. It would seem that if the Arbitration Commission was authorized to decide solely and exclusively as to whether the title to the Chamizal tract was in the United States or Mexico, the only possible answer was that Mexico had title to the whole tract or that the United States had title to it.

"Because of the legal technicalities involved in the Chamizal arbitration, much confusion and misunderstanding have arisen over the outcome, especially the action of the United States in rejecting the award. On the surface, it has seemed to many persons that Mexico won the decision, since the vote on dividing the tract was 2 to 1. However, it is the author's view that this disposal of the case would not have been in accord with the instructions, to which both nations agreed, that the Commissioners were obliged to follow. This position is substantially the one adopted by the Department of State at the time.

"Opinions in Mexico

"As was natural, the reaction in Mexico to the award was entirely different than in the United States. The Mexican Government warmly welcomed the outcome and felicitated its representatives on their victory. But such good feelings and high hopes were short lived; they were dashed when the day for compliance with the award passed (June 15, 1913) without receipt of the territory. A leading contemporary authority, Licenciado Alberto María Carreño, voiced a broadly held opinion when he declared that Mexico had won a valid and binding judgment that should have been accepted and carried out. He believed that the arbitration failed only because the United States refused to respect its obligations under the convention of 1910. As for the contention of the American officials that the award could not be executed because it was physically impossible to locate the riverbed of 1864, Senor Carreño replied that this problem was not a legal one to concern the arbitrators but a physical one for surveyors and engineers, who could locate the line approximately and thus make possible substantial compliance with the decision of the tribunal. Senor Carreño detected in the rejection of

⁹⁴ U.S. v. Venezuela, "American Journal of International Law" (January 1911), V, 230.

⁹⁵ U.S. Foreign Relations, 1837, 605-606.

the award the black hand of Yankee imperialism and later published two additional volumes to elaborate his broader thesis.⁹⁷

"Another contemporary Mexican writer viewed the matter differently. Writing in June of 1911, shortly after the terms of the award were announced, Roberto A. Esteva Ruiz stated categorically that the decision was a nullity, contrary to law, and unjust for Mexico. He cited the rules mentioned by Calvo and the precedent in the Northeastern Boundary Arbitration to show that Mexico had the legal right to repudiate the award. In his opinion, Mexico lost its case at El Paso, for his country was entitled to, and should have received, all of the Chamizal. The treaties of 1848 and 1853, according to Senor Esteva Ruiz, placed all of the zone within Mexico. They also fixed an invariable line along the Salazar and Emory survey, which could be changed only with the consent of both nations. Since Mexico had never agreed to any change, the boundary must remain as established earlier. The judgment of the arbiters based on the Treaty of 1884 improperly applied international law by making the terms of the treaty retroactive in effect. In this way, Mexico was deprived of territory that belonged in the national domain; Mexico thus had a greater right than the United States to protest, and to reject the award.⁹⁸

"Recent legal opinion in Mexico concerning the Chamizal arbitration is illustrated by the views of Licenciado César Sepúlveda, director of the faculty of law of the National University. While he believes that the United States was in error in rejecting the award, he credits American officials with sincere efforts to find a solution after the failure of the arbitration. On close examination, he finds untenable the two basic arguments that Anson Mills and the State Department submitted against the decision. He first brushes aside the contention that the award could not be physically carried out because the line of 1864 could not be located. This problem, he says, could not have concerned the Arbitration Commission, as it was a technical matter for surveyors. As for the second point—that the Commission exceeded its powers—Licenciado Sepúlveda insists that the arbiters acted within the limits of their authority. While article III of the convention of 1910 did restrict the Commission to the task of deciding 'solely and exclusively as to whether the international title to the Chamizal tract is in Mexico or the United States of America,' the purpose of this clause was simply to insure that the Commission dealt only with the territorial question, rather than with ancillary matters such as water rights. The compromise did not tie the hands of the Commission as the State Department contended; the Commission possessed the legal authority to decide the territorial issue involved, and its decision should have been respected. The best solution of the problem, he concludes, is for the United States to accept and implement the award of 1911, even if the American Government is 50 years late in doing so.⁹⁹

"NEW EFFORTS AT SETTLEMENT"

"Following the failure of the attempt at arbitration in 1911, the United States sought to find a solution by turning again to the processes of diplomacy. The Department of

State now urged that the dispute be settled as speedily as possible without any discussion of the validity of the award or the possibility of scientifically relocating the channel in 1864. However, at that time, Mexican Ambassador de la Barra rejected the opinion of the American Commissioner, Anson Mills, that the award could not be executed; he added that, should the Commissioner find the course of the river in 1864 to be undiscoverable and thus prove the correctness of the position taken by the American Commissioner, he would go much further in meeting the wishes of the United States.¹⁰⁰

"On August 24, 1911, the Secretary of State suggested to the Mexican Ambassador that negotiations be undertaken to incorporate the following terms in a formal agreement:

"1. A preamble reciting the pertinent articles of the present boundary treaties and conventions between the two Governments.

"2. A recital of certain general differences as to the interpretation of these treaties as to the international title to the Chamizal tract in particular, and as to the validity of the recent award, and a statement of the desire on the part of both Governments to settle these differences in an amicable way.

"3. Certain declaratory interpretation of the boundary treaties and conventions, particularly as to the following points: (a) The treaties of 1848–53 establish a fluvial or arcfineous boundary; (b) the treaty of 1884 is retroactive in scope; (c) two classes of changes only are contemplated in the treaty of 1884, i.e., erosion and avulsion, and these classes embrace all the changes which have taken place on the Rio Grande and Colorado Rivers, since by virtue of the treaties of 1848 and 1853 certain parts of the dividing line between the two countries have followed the middle of the channel of the Rio Grande and the Rio Colorado, as well as changes which may take place in the future; (d) provisions relating to the adjustment of the international boundary line at El Paso and Juárez through mutual arrangement by a declaratory interpretation of the boundary treaties and the elimination of the Horeón Bar above Brownsville; (e) possible provision for the indemnification of private individuals who may be thought by one or the other Government to be damaged through the adoption of the foregoing provision.¹⁰¹

"In reply, however, Senor de la Barra was of the opinion that 'inasmuch as the matter is finally adjudicated by award, nothing remains but to carry out duly the said decision by means of such arrangement as may be made to run the dividing line in accordance with the sentence.' He also insisted that the award had placed Mexico in a different position by changing the legal situation—that, by the award, Mexico had acquired rights she could not surrender unless fully compensated therefor.¹⁰² The State Department replied that the award was absolutely invalid, and that it would be impossible to locate the line of 1864. But the Department added that it did not ask the Government of Mexico to admit the invalidity of the recent award; it proposed only that these contentious matters be held in abeyance while the two Governments worked out through friendly negotiations a practical solution of their difficulties.¹⁰³ This approach, however, did not appeal to the Mexican Government.

"Projects to trade territory"

"In 1913 the Department of State attempted again to effect a settlement. According to a plan submitted by Secretary Knox, Mex-

ico would exchange the Cordova and the Chamizal tracts for the Horeón and a small area near El Paso and south of the river.¹⁰⁴ The bar of Horeón, which includes some 368 acres, was created by an artificial cut in the Rio Grande in 1900. The area is located near the mouth of the river. The first reports from Mexico indicated that these proposals were acceptable, but no one knows just how near a solution of the problem was at that time. When the United States refused to recognize the Huerta government in Mexico, the latter refused to consider the proposals further.

"Later, a plan of the State Department provided for the United States to cancel the Pious Fund obligation of Mexico in return for her granting the United States title to the Chamizal tract. The Pious Fund was established in 1697 by the Government of Spain and the Catholic Church for the benefit of Jesuit missions in California. When in 1848 Mexico took over the fund, it had grown to several million dollars. Since the United States claimed the fund as a national asset when she acquired California, it became a basis for arbitration. In 1902, the Permanent Court of Arbitration at The Hague ruled that Mexico should pay the United States \$1,420,682.67 cash and \$43,050.99 annually in perpetuity.¹⁰⁵ No payments, however, have been made since 1914.

"On August 17, 1932, the Mexican Secretary of Foreign Relations, Senor Tellez, submitted the following draft agreements to the Ambassador of the United States in Mexico City: first, a convention covering the rectification of the river; second, a protocol covering the transfer of El Chamizal to the United States; and third, a protocol covering the release by the United States of the Pious Fund and its accrued and unpaid balance. Because of some technical points in the drafting of this document, J. Ruben Clark, the U.S. Ambassador to Mexico, submitted a counterdraft in which he combined El Chamizal with the Pious Fund. The Mexican Minister agreed to the change and said he wished to get the approval of President Ortiz Rubio and General Calles, and then submit the proposal to the entire cabinet.

"The second section of the protocol provided that the channel of 1864 be located either 'in fact or by computation' in order to arrive at the extent of territory which had to be equal in making the transfer of the Chamizal tract. The inclusion of this provision indicates that something in addition to the Pious Fund was to be given to Mexico in exchange for El Chamizal. Mr. Clark felt that the United States had two alternatives: 'either to continue to repudiate the award and deal on that basis—a basis which had led us nowhere in 20 years—or to recognize that there was an award against us, and, while not relinquishing our own position regarding the award, secure from Mexico a relinquishment and transfer of her rights thereunder.'

"One suggestion was that the flood levee on the El Paso side of the river be taken as the northern levee of the rectified channel.

"This procedure would have thrown perhaps 10 acres of the Chamizal tract to the Mexican side of the river. Mexico requested that the possibility of moving the river north of the international bridges between the city of El Paso and Ciudad Juárez be considered so as to transfer some of the actual tract, rather than just the bed of the river, south of the rectified river channel, or to make a similar adjustment lower down the river. Respecting this plan, L. M. Lawson, U.S. Boundary Commissioner, on October 21, 1932, said that from the viewpoints of both engineering and cost, it would not be possible to

¹⁰⁴ Ibid., 974.

¹⁰⁵ House document, 2d sess., 1903, Pious Fund arbitration, 4442.

⁹⁷ Alberto María Carreño, "México y los Estados Unidos de América" (1st ed., 1922), ch. XX. See also his "La Diplomacia Extraordinaria entre México y Estados Unidos" (1st ed., 2 vol., 1951), passim.

⁹⁸ Roberto A. Esteva Ruiz, "Ensayos Jurídicos" (México, D. F., 1960), 241–253.

⁹⁹ César Sepúlveda, "El Chamizal y algunas cuestiones diplomáticas pendientes entre México y los Estados Unidos," "Revista de la Facultad de Derecho de México," (México, D. F., 1962), XII, No. 47, 487–491.

¹⁰⁰ U.S. Foreign Relations, 1911, 602.

¹⁰¹ Ibid., 599.

¹⁰² Ibid., 603. During these negotiations de la Barra became President of Mexico. The correspondence was carried on under his direction.

¹⁰³ Ibid., 604–605.

relocate the river as suggested. Such alterations, he declared, would introduce 'reverse curves' in the river channel, which result would not be advisable. The estimated cost would be about \$1,450,000 if the change was made at the bridges, or \$670,000 if the change was made in the lower part of the Chamizal.¹⁰⁶

"When in 1930 the International Boundary Commission drew up a plan for rectifying the course of the Rio Grande, the Chamizal was included. The project called for exchanging about 10,000 acres of land between the two countries, beginning at the western point of El Chamizal and continuing to Fort Quitman. When the treaty of rectification was signed on February 1, 1933, it specified that work should begin south of Monument No. 15, on Cordova Island.¹⁰⁷

"Breaking the deadlock"

"These various approaches, however, proved fruitless so far as a settlement of the issue of the Chamizal was concerned. The attitude of Mexico was that the award of the Arbitration Commission should be implemented, whereas the United States remained firm in contending that the Canadian and Mexican Commissioners had exceeded their powers in seeking to divide the tract. All efforts at an exchange of territory for territory, or land for money obligations failed because equivalent values, in the eyes of the negotiators, could not be arrived at. Another impediment has been the fact that for the past 20 years or so, Mexico has insisted that a substantial part of the land it would receive should be in the Chamizal tract itself. Clearly, the deadlock could be broken only by an act of statesmanship on the highest level—a decision that could cut through the accumulation of historical, legal, and technical flotsam and lagan the Chamizal case had accumulated. The intervention of Presidents Kennedy and Lopez Mateos was aimed precisely at the stalemate that had persisted for 52 years. They directed their attack on the problem from the vantage point of confidence; they sought a practical compromise.

"In effect, President Kennedy abandoned the rigid legal position the U.S. Government had maintained since it rejected the award of the Arbitration Commission in 1911. The change in attitude of the executive department was emphasized in Kennedy's statements that the United States, 'after agreeing to arbitration, backed down, and did not accept the report,' and that the United States should erase the 'black mark' resulting from its refusal to comply. This approach in effect, though not technically, recognized the legal claims of Mexico to most of the Chamizal tract, broadly in keeping with the decision of the majority of the Arbitration Commission, Lafleur and Puga, and it overruled the position of Mills and the State Department. But by now, the problem has become much more difficult. During the half century since the award, many changes have taken place in the Chamizal. Whereas in 1911 the total area was valued at \$500,000, the part now assigned to Mexico is estimated to be worth between \$25 and \$30 million.¹⁰⁸ As a result, the adjustment of the interests involved will be decidedly more complex and costly.

"In deciding the new American policy, the Government at Washington was obliged to weigh such costs, plus any opposition that might develop in the country and in Congress, against the broader and more intangible benefits of good faith, good will, and national prestige. President Kennedy and his advisers doubtless concluded that with

the passing of time the problem would become worse rather than better, and that the best way out would be to settle the issue once and for all, even though some loss of territory would be involved. The decision of the U.S. Government as announced on July 18 was thus a diplomatic or practical, and not a legal disposition of the problem. The present position of the Department of State is as follows:

"The United States has a proud record of complying with its international obligations and faithfully executing treaties to which it has agreed. * * * Our disagreement with the Chamizal award, even though based on valid arguments held in good faith, seems inconsistent, after we had agreed in a treaty to accept the result "without appeal" with our historical position and goals as a nation."

"There would be specific advantages in our relations with Mexico:

"A source of irritation which has troubled United States-Mexican relations for almost 100 years would be removed;

"Arbitration would be restored as a means of peaceful settlement of disputes between the United States and Mexico;

"The Chamizal as an emotional issue in Mexico, which distorts what otherwise might be a favorable view of the United States, would be removed. Settlement would eliminate use of the Chamizal as the basis for propagating the view, even through the education system, that the United States does not live up to its treaty commitments; and

"The Communists and other enemies of the United States in Mexico would be denied one of the propaganda weapons they are using to injure United States-Mexican relations.

"The settlement should also have significant advantages for El Paso:

"An international dispute which has seriously impeded the natural direction of growth of El Paso would be removed and harmonious relations between the sister cities of El Paso and Ciudad Juarez would be strengthened;

"The development of El Paso, especially traffic circulation and the provision of public utilities, would be materially improved with the incorporation into El Paso of the upper half of Cordova Island;

"The cloud on the title to the lands in the Chamizal tract remaining in the United States, which has plagued property owners for some 100 years, would be removed;

"The revenue base in El Paso would be considerably enhanced because a blighted area in El Paso would be improved and contribute its fair share to the cost of municipal government;

"Settlement of the dispute will at last permit execution of the international flood control measures essential for the proper protection of El Paso;

"The international bridges at El Paso could be replaced with structures in harmony with the needs of the over 600,000 people who live in the El Paso-Ciudad Juarez area; and

"The reestablishment of the Rio Grande as the boundary would facilitate border control, health control, and other inspection measures, as well as beautify the riverfront on both sides of the river."¹⁰⁹

"The terms of settlement"

"The settlement on which the two Governments agreed has a double purpose: to end the dispute with Mexico and to establish a fixed river boundary between El Paso and Ciudad Juarez. The negotiators of the agreement have also had in mind the protection of existing property interests in the area. As a result, the settlement calls for the transfer to Mexico, and the exchange between Mexico and the United States, of several different parcels of land inside and just

outside the Chamizal. Specifically, the agreement incorporates the following provisions:

"1. The United States will transfer to Mexico a net amount of 437 acres of territory now under American jurisdiction, approximately the area that the Arbitration Commission awarded in 1911. Of this amount marked for Mexico, 366 acres will come from the disputed Chamizal zone and 71 acres from U.S. territory east of Cordova Island.

"2. Cordova Island will be divided equally between the United States and Mexico. Each nation will have 193 acres. This transfer of territory to the United States is to equalize the transfer to Mexico of land necessary to establish the river as the boundary.

"3. The Rio Grande will be relocated, beginning at a point marked "A" on the map included in this study. The new channel will be concrete lined, and will make possible an improvement of properties on both sides.

"4. Both Governments will acquire title to all the land and improvements in the areas assigned to them, 'free of any limitation on ownership or encumbrance of any kind including private titles.' No payments will be made, as between the Governments, for the lands transferred.

"5. The United States will receive compensation for the 382 structures in the Chamizal zone and to the east of Cordova Island that will be transferred to Mexico. However, payment will be made by a Mexican bank (Banco Nacional Hipotecario Urbano y de Obras Publicas) and not by the Mexican Government. The value of the improvements passing to Mexico has been set at \$4,675,000.

"6. The two Governments will share equally the cost of relocating and constructing the new river channel, as well as the cost of building the new bridges. Each Government, however, will assume the expenses that will arise on its side of the river in the course of making these improvements.

"7. After both Governments have approved the convention and passed the legislation necessary to implement the agreement, the Government of the United States will acquire by purchase or condemnation the properties to be transferred to Mexico. This process will take place within a period of time upon which the two Boundary Commissioners agree.

"8. When all acquisitions and arrangements have been completed, the U.S. Boundary Commissioner will certify to this effect. Both Commissioners will then proceed to demarcate the new boundary. The record of their action will be submitted to both Governments for their approval.

"9. The International Boundary Commission will be 'charged with the relocation, improvement, and maintenance of the river channel, as well as the construction of the new bridges.'

"10. The nationality of present or former residents in the areas to be transferred will not be affected, nor will the jurisdiction of the Governments over legal proceedings or over the laws applicable to acts or conduct in the areas before the exchange, be altered."¹¹⁰

"To clarify for the reader the transfers and exchanges involved in the settlement, the map on pages 26 and 27 has been divided into three sections. Section 1 includes all of the Chamizal lying south of the line of 1852. Of this area, 366 acres are to be cut to Mexico. About 1,750 persons live in the part to be transferred, most in the narrow western region. The land in this section assigned to Mexico contains about 233 single dwellings, many of them owner-occupied. Several factories and business establishments are in the zone and will be affected by the transfer. It is through this section that the streets of

¹⁰⁶ These negotiations were not fully documented. See U.S. Foreign Relations, 1932, V, 824.

¹⁰⁷ U.S. Treaty series, No. 864.

¹⁰⁸ The El Paso Times, July 11, 1963.

¹⁰⁹ Department of State, "The Chamizal Settlement," July 1963, 5-6.

¹¹⁰ Department of State, press release, July 18, 1963.

El Paso lead to the international bridges over the Rio Grande and directly into the center of Ciudad Juarez, Mexico. Almost all of the people in the area are American citizens of Mexican descent. Because the tract is disputed territory, clear titles have not always been given to the landholders.

"Section 2, which is to be transferred to the United States, consists entirely of undeveloped land. According to plans, about 50 acres will be used for various Federal installations, and, depending on the action of Congress, the remainder may be given to the city of El Paso for a recreational area and for other purposes relating to the general welfare, or sold for private enterprises.

"In section 3, which will go to Mexico, there are about 248 dwellings. The population is about 1,775. A new elementary school is in this area, and most homes are more modern and of greater value than those in section 1.

"Of the entire acreage to be transferred to Mexico, more than half consists of agricultural land and stockyards. All the area marked for the United States is in section 2 and all is now undeveloped.

"Questions to be resolved

"The settlement involves various legal and political questions, some of which have not yet been resolved. For example, the U.S. Government does not admit, nor can it admit, that the Chamizal is Mexican territory in keeping with the arbitration award of 1911. Legally, the United States must insist on its ownership of the entire tract, for otherwise it could never acquire title to the properties involved in the settlement, especially through condemnation proceedings. Again, since all American titles to land and buildings will become void as soon as they are transferred to Mexico, it is necessary for the United States to own them up to the moment of transfer. Leading court decisions hold that when two states or nations agree on a boundary, even though it be a compromise line, the conclusive presumption is that such line has always been the true boundary. The courts have accordingly ruled that titles held under grants from one country to land placed by a compromise in another country are entirely void.¹²¹ For these reasons, all property claims and all details involved in moving the river channel must be completed before the title to any tract is transferred to Mexico.

"In its present form, the agreement between the Governments of the United States and Mexico is a memorandum based on diplomatic discussions and an exchange of notes. It is technically a *modus vivendi* that must be converted into a convention or treaty before the two Governments may formally approve it. But since the memorandum contains the essential details of the agreement, there is no reason to anticipate difficulty in negotiating the necessary convention.

"The next step will require action by the legislative branches of both Governments to confirm the convention and pass the measures necessary to put it into effect. First, the Senates of the two nations must approve the convention, then their Congresses must enact the proper enabling legislation and appropriate the funds necessary to carry out the terms of the convention.

"The outlook in Mexico is favorable, since the majority of leaders in the country appear to regard the settlement as a diplomatic victory. According to the Mexican Constitution, treaties are confirmed by a simple majority of the Senate.¹²² Because of the special position of leadership the President

occupies in the Mexican political system, he should have no trouble under normal conditions in securing this majority.¹²³ Although the Constitution of Mexico proscribes certain types of treaties,¹²⁴ boundary settlements are not specifically forbidden. Article 27, however, declares that 'the national domain is inalienable and imprescriptible.' Yet this restriction has not been applied in respect to rectifications along the boundary and settlement of water rights. The convention of February 10, 1933, for the rectification of the Rio Grande in the Valley of Juarez-El Paso, and the treaty of February 3, 1944, respecting the distribution of waters between Mexico and the United States, both of which Mexico has faithfully carried out, are precedents for the action of the Mexican President in the present case.¹²⁵ As head of the Partido Revolucionario Institucional (PRI), which controls both branches of the Congress,¹²⁶ President Lopez Mateos should have no problem in securing such legislative measures as may be necessary to carry out Mexico's part of the agreement, unless there is some unusual and unexpected development.

"The prospect in Washington

"The outcome in Washington is less certain. What action the Senate and Congress will take is anyone's guess at this moment. The proposed disposition of national territory—or territory that many persons in the United States consider to be national—could arouse deep feelings of opposition in Washington and throughout the country. The two U.S. Senators from Texas are sharply divided. RALPH W. YARBOROUGH, Democrat, approves the agreement in full and has pledged his support in its behalf. As a former resident of El Paso, Senator YARBOROUGH sees many benefits that the agreement will bestow on this border area. On the other hand, the Republican Senator from Texas JOHN TOWER, strongly objects.¹²⁷

"The position of Senator TOWER is interesting and important. He says that his opposition to the settlement is based primarily on the belief that a State of the Union must not be 'dismembered' without its consent. He therefore insists that the people of Texas, acting through the legislature, must approve the settlement before he votes in favor of it.¹²⁸ Of course, the Senator is entirely within his rights in defining the conditions under which he will vote pro or con; legally, however, there is a question as to whether the people or the government of Texas has any control over the ultimate decision. When Texas was voted in the Union on March 1, 1845, the Congress at Washington agreed to annexation on this condition: 'said State to be formed subject to the adjustment by this Federal Government of all questions of boundary that may arise with other governments.'¹²⁹ In a recent opinion, the Attorney General of Texas has concluded that the approval of the people of Texas is not

necessary to legalize the transfer of the Chamizal territory to Mexico.¹³⁰

"Once the Senate of the United States has confirmed the convention, if it decides to do so by the necessary two-thirds vote, both Houses of Congress must pass legislation appropriating the funds necessary to buy the acreage that will go to Mexico and to effect the changes and improvement on the American side of the river. At this moment when other aspects of President Kennedy's legislative program are in doubt, it is not possible to make safe predictions.¹³¹ The outcome respecting the Chamizal agreement would seem to depend in part on the right timing in submitting the issue to Congress for action.

"In the event that opposition arises in the Senate and the two-thirds vote required to confirm the convention does not materialize, does that kill the Chamizal agreement? Not necessarily. Another approach is still available, although the treaty route appears to be better in the present case. The agreement may be approved by means of a joint resolution passed by a simple majority in both House of Congress. This method has been used on various occasions when action on treaties has been blocked by a Senate minority—for example, in the annexation of Texas in 1845 and Hawaii in 1895. The so-called Green-Sayre formula, according to which a subcommittee of the Senate's Committee on Foreign Relations acts closely with the executive department in working out the details of a foreign-policy project to be adopted by a joint resolution, may afford an effective method of overcoming obstructionism.¹³² It must be borne in mind, however, that in keeping with article VI, paragraph 2 of the Constitution, a joint resolution, as a 'law,' must 'be made in pursuance' of the Constitution, and it would be subject to stricter limitations than a treaty made 'under the authority of the United States.' Given this important constitutional distinction between laws and treaties, method remains as a possibility if the convention would be a safer procedure to use in transferring to a foreign country territory under the jurisdiction of a State in the Union.¹³³ Even so, the joint-resolution method remains as a possibility if the convention encounters strong minority opposition in the Senate.

"The task ahead

"After the hurdles in Washington and Mexico City have been overcome, much work lies ahead in El Paso. The Federal Government must buy or legally condemn all the properties in the area destined for Mexico, plus land on the north side of the river, estimated at 56 acres, needed for the right-of-way of the channel.

"The channel of the river must be moved and rebuilt. Plans should be drawn up to develop, utilize, and serve the territory along the north bank of the river, and these plans must be put into effect. The issue concerning a suitable highway along the north bank of the river must be disposed of.¹³⁴ Some 3,725 persons must be moved out of the area affected and provided with housing, schools, and other facilities elsewhere in El Paso. It is estimated that the cost to the Federal

¹²¹ William L. Tucker, "The Mexican Government Today" (Minneapolis, 1957), chs. 4 and 7.

¹²² Constitution of Mexico, 1917, art. 15.

¹²³ Rodolfo Cruz Miramontes, "Derecho Internacional Fluvial" (Mexico, D.F., 1958), passim. Also see his discussion in "Lecturas Juridicas" (Universidad de Chihuahua, Escuela de Derecho, 1962), No. 10, 75ff.

¹²⁴ Robert E. Scott, "Mexican Government in Transition" (Urbana, 1959), chs. 6, 7, and 8.

¹²⁵ El Paso Herald-Post, July 18, 1963; the El Paso Times, July 17, 1963. Senator GRUENING, of Alaska praises the Kennedy settlement, CONGRESSIONAL RECORD, vol. 109, pt. 10, pp. 13074-13077.

¹²⁶ The Dallas Morning News and the El Paso Times, July 19, 1963.

¹²⁷ Joint resolution, Mar. 1, 1845, 5 Statutes, 797.

¹²⁸ Henderson v. Poindexter's Lessee, 12 Wheaton 530; De la Croix v. Chamberlain, 12 Wheaton 599.

¹²⁹ Constitution of Mexico, 1917, art. 76, par. I.

¹³⁰ The El Paso Times, July 17, 1963. The Attorney General has refused to file suit to test the validity of the Chamizal agreement. See El Paso Herald-Post, July 31, 1963. A suit is pending respecting the constitutionality of the transfer of territory from Texas. See the El Paso Times, Aug. 6, 1963.

¹³¹ See U.S. News & World Report, Aug. 5, 1963, 44; the El Paso Times, Aug. 6, 1963.

¹³² Elmer Plischke, "Conduct of American Diplomacy" (Princeton, 1961), 400-403.

¹³³ C. Herman Pritchett, "The American Constitution" (New York, 1959), 333-336.

¹³⁴ The El Paso Times, July 24, 1963.

Government could finally amount to between \$30 and \$50 million. The city of El Paso and El Paso County must assume additional costs and responsibilities. At best, between 3 and 5 years may be required to complete the project in its various phases.¹²⁵

"Measured in any terms, the Chamizal settlement is a major undertaking, and it is of special significance to the inhabitants of the El Paso-Juarez area. From the local point of view, regardless of other considerations, the settlement offers an opportunity, long overdue, to eliminate a kind of no man's land, much of it vacant and unimproved or occupied by substandard houses. The settlement opens the way for a beneficial program of rebuilding, unique because of its international aspects. It matches on the American side of the river the ambitious undertaking of Mexico in its Programa Nacional Fronterizo that is rapidly changing the face of Ciudad Juarez and other Mexican cities along the border. The social and economic interdependence of El Paso and Juarez has been firmly established during the many interesting years of their history as twin cities facing each other across the low banks of the Rio Grande. It finally put into effect, the accord that Presidents Kennedy and Lopez Mateos have reached should materially advance the well-being of both communities at the Pass of the North, reducing the physical barriers between them and stimulating the development of mutual interests, both economic and cultural."

THE CHAMIZAL TREATY OF 1963—THE UNITED STATES AND MEXICO

Mr. YARBOROUGH. Mr. President, the Chamizal dispute has been inflaming the relations between the United States and Mexico for too many years. Now, thanks to the determination of the late President Kennedy to solve this problem, and the continuation of this policy by President Johnson, we are approaching an equitable settlement of the Chamizal dispute.

As a lawyer, and former judge, it has long been a matter of regret to me that the United States had the burden of defending its rejection of an arbitration award it had earlier agreed to accept. What an issue this made for Communist and other anti-American propaganda south of the border. The composition of this dispute by the treaty will be a forward step in improving our relations with all Latin America.

This type of exchange is in principle not novel or unique; it sets no precedent. This treaty follows a pattern of many years by which tracts of land along the Rio Grande have been ceded to one country or the other as the river channel shifts. In accordance with the provisions of the treaties of 1884 and 1905 between Mexico and the United States, over 30,000 acres of land have been transferred between the two countries. This present settlement is well within these precedents for land exchange with Mexico in the alluvial valley of the Rio Grande.

There seems little occasion here for abstract questions of whether a State's territory could be ceded to a foreign nation without its consent. The southern boundary of the State of Texas at its annexation was placed at "the principal stream" of the Rio Grande, the same boundary as the Republic of Texas. By the Treaty of Guadalupe-Hidalgo in 1848

the boundary is described as "up the middle of that river—the Rio Grande—following the deepest channel where it has more than one, to the point where it strikes the southern boundary of New Mexico." Necessarily when one describes a boundary in terms of "principal stream" or "deepest channel" there is a latent uncertainty and a contemplation of later adjustments and more certain demarcation.

Even without this general power, we find that Texas specifically gave up its authority over its foreign boundaries by the terms of its annexation agreement with the United States in 1845. The State of Texas was formed "subject to the adjustment by this Government—the United States—of all questions of boundaries that may arise with other governments." Reluctant as any Texan to relinquish any of our sovereignty, this contract between the United States and the Republic of Texas conclusively settles the question of whether Federal authority is exclusive on this matter.

This type of adjustment has in fact gone on along the Rio Grande by treaty and Boundary Commission action without the question of State sovereignty or consent being involved. If this problem involved lands not within the scope of historical channels of the Rio Grande, a different question might be posed, but all this land is within the alluvial flood plain of the Rio Grande where it has always been understood that border changes would take place both naturally and through the U.S. treaty power to locate and define the "deepest channel" of the Rio Grande. There is no substantial legal question involved here. On page 30 of the hearings, an opinion prepared in the Texas attorney general's office appears which comes to the same conclusion. I am not aware of any contrary views being expressed by officials of the Texas State government.

The responsible officials of the community most affected, El Paso, have expressed their support of the treaty. A wire from the mayor of El Paso states:

The city of El Paso supports the ratification of the Chamizal Treaty as we believe it is necessary to settle this longstanding dispute.

Individuals and businesses who will be dispossessed by action of the treaty must be given full relocation values and the treaty itself must be properly symbolized along the area of the relocated river channel. All of the points for this proper symbolization have been officially made by us to the bureaus in Washington with the full knowledge of our late President Kennedy, and these studies are underway now.

JUDSON F. WILLIAMS,
Mayor, City of El Paso.

A wire from the county judge of El Paso County states:

El Paso County government recommends Chamizal Treaty ratification. We have already proposed to various bureaus and agencies of Federal Government plans for compensating our displaced persons and the county and city for their respective losses. We have also presented plan for symbolizing settlement and monopolizing upon it toward strengthening the ties of understanding and friendship between the United States and Mexico.

GLENN E. WOODWARD,
County Judge.

EL PASO COUNTY, TEX.

These supporting telegrams from the officials of El Paso bring up the principal difficulty in this settlement: That it would require the eviction of all the residents and users of a thickly settled urban area. Special factors make it impossible to handle this problem as a typical eminent domain taking. The extended existence of this controversy and the sporadic negotiations have tended to keep much building in the Chamizal at a substandard level. For many of these people to be evicted, fair market value compensation might hardly make a down payment to purchase replacement dwellings. Unless fully adequate compensation is provided, the U.S. Government will be creating a grave social problem in El Paso by this transfer and eviction of the residents. The Congress will be called upon next year to act on enabling legislation for the treaty in which the residents of the Chamizal can be dealt with equitably. The 4,500 American citizens living in the Chamizal must be treated with as much consideration as the international problems involved receive. Only with full and adequate compensation can this Nation discharge its obligation to its own displaced citizens.

I am confident Congress will act fairly in providing solutions for the problems that will be created for El Paso by implementation of this treaty. On that basis, I urge its ratification.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the opinion of Milton Richardson, assistant attorney general of the State of Texas.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

EL CHAMIZAL

(By Milton Richardson, assistant attorney general, State of Texas)

Question: Can the United States settle the Chamizal dispute between the United States and Mexico without in any manner obtaining the consent or approval of the State of Texas to the settlement?

The settlement of the Chamizal problem might possibly involve the State of Texas in two ways. First, as a sovereign exercising jurisdiction over a geographical area and second, as an actual owner of land in the disputed area.

To properly understand the problem and to ascertain the answer to the above question it is necessary to consider a part of the history of the boundary between the United States-Texas and Mexico. It is likewise necessary to define or state just what El Chamizal is and how it came to be.

WHAT IS EL CHAMIZAL?

El Chamizal is an area of land several hundred acres in extent located between the downtown area of the city of El Paso, Tex., U.S.A., and Ciudad Juárez, Chihuahua, Mexico. It is an area that lies between the current bend of the Rio Grande as it turns southeast after coming down the Paso del Norte in a north-south direction and the bend of the Rio Grande as it turned toward the southeast after coming down the pass in 1852. Generally speaking, during this interval the bend of the river and the river have moved to the south.

PERTINENT HISTORY OF BOUNDARY BETWEEN UNITED STATES-TEXAS AND MEXICO

The first official pronouncement of the boundary between the Republic of Texas and Mexico was made by the Congress of the Republic of Texas in 1836 when it defined

¹²⁵ El Paso Herald-Post, July 18, 1963.

the limits or boundaries of the Republic (1 Laws of the Republic of Texas 133, 1 Gam-mel 1193). The portion of the boundary line fixed thereby with which we are primarily concerned, ran in the Gulf of Mexico from the Sabine River three leagues from land, "to the mouth of the Rio Grande, thence up the principal stream of said river to its source." (Ordinarily unless specifically stated otherwise, when a river is made the boundary between States or sovereign States the center thereof is considered to be the boundary between the States or the sovereign States. Such a boundary moves with changes in the course of the river which are caused by erosion and accretion but said boundary remains in the old bed and does not follow the river if the course change thereof occurs by avulsive action. *Nebraska v. Iowa*, 143 U.S. 359; *Virginia v. Tennessee*, 148 U.S. 503; *Henry Wheaton*, Elements of International Law (6th ed.), I, 353-354; *Henry Halleck*, International Law (4th ed.), I, 183; *Christian Wolff*, Jus Gentium Methodo Scientifica Cetractatum, II, 63-64; *William E. Hall*, A Treatise on International Law (5th ed.), pp. 121-122; *Samuel Pufendorf*, De Jure Naturae et Gentium Libro Octo, II, 594; *Grotius*, II, 217-218.) The Texas Supreme Court has specifically held that the sovereignty and jurisdiction of the State of Texas extends to the center of the Rio Grande. *Tugwell v. Eagle Pass Ferry Co.*, 74 Tex. 480, 9 S.W. 120, 13 S.W. 654.

On December 29, 1845, Texas entered the United States of America as a State. By the terms of the articles of annexation, the State of Texas was to be formed "subject to the adjustment by this government [the United States] of all questions of boundaries that may arise with other governments";—joint resolution, March 1, 1845, 5 U.S. Stat. 797.

The resolution of March 1, 1845, also provided that the State of Texas should retain the ownership of her public lands. (This would include the north half of the Rio Grande. Article 5302, V.C.S.; *Heard v. Town of Refugio*, 127 Tex. 349, 103 S.W. 2d 728; *Chicago, R.I. & G. Ry. Co. v. Tarrant County Water Control and Improvement District*, 123 Tex. 432, 73 S.W. 2d 55; *Maufrais v. State*, 142 Tex. 559, 180 S.W. 2d 144; *State v. Bradford*, 121 Tex. 515, 50 S.W. 2d 1065.)

In 1848 at the conclusion of the war with Mexico, the United States and Mexico signed the Treaty of Guadalupe Hidalgo (9 U.S. Stat. 926). Among other things, the Treaty of Guadalupe Hidalgo established the boundary between the United States and Mexico. Section 5 of this treaty reads in that part pertinent to the boundary between the United States-Texas and Mexico as follows:

"The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence, up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; * * *

"In order to designate the Boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both Republics, as described in the present Article, the two Governments shall each appoint a Commissioner and a Surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the Port of San Diego, and proceed to run and mark the said boundary in its whole course, to the Mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result, agreed upon by them shall be deemed a part of this Treaty, and shall have

the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

"The Boundary line established by this Article shall be religiously respected by each of the two Republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution."

In 1852 the special commissioners and surveyors, Emory and Salazar, marked the boundary along the Rio Grande in the El Chamizal area as well as other places. Thus we know today from their work where the bed of the Rio Grande lay in 1852.

Between 1852 and 1864 accretion accrued to the north bank of the Rio Grande in the Chamizal area accompanied by its companion, erosion, which ate into the south bank of the Rio Grande. The result was a gradual movement of the bed and stream of the Rio Grande to the south.

In the year 1864 the bed of the Rio Grande moved farther south by the action of accretion and erosion; however, it moved at a very rapid rate of speed.

In the year 1884 the United States and Mexico entered into another convention or treaty regarding the boundary between the two countries. 23 U.S. Stat. 10011. The Treaty of 1884 which is pertinent to the boundary between the United States-Texas and Mexico reads in part as follows:

"Whereas, in virtue of the 5th article of the Treaty of Guadalupe Hidalgo, between the United States of America and the United States of Mexico, concluded February 2, 1848, and of the first article of that of December 30, 1853, certain parts of the dividing line between the two countries follow the middle of the channel of the Rio Grande and the Rio Colorado, to avoid difficulties which may arise through the changes of channel to which those rivers are subject through the operation of natural forces, the Government of the United States of America and the Government of the United States of Mexico have resolved to conclude a convention which shall lay down rules for the determination of such questions, and have appointed as their Plenipotentiaries: * * *

"Article I

"The dividing line shall forever be that described in the aforesaid Treaty and follow the centre of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

"Article II

"Any other change, wrought by the force of the current, whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid Treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852; but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.

"Article III

"No artificial change in the navigable course of the river, by building jetties, piers, or obstructions which may tend to deflect the current or produce deposits of alluvium, or by dredging to deepen another than the original channel under the Treaty when there is more than one channel, or by cutting waterways to shorten the navigable

distance, shall be permitted to affect or alter the dividing line as determined by the aforesaid Commissions in 1852 or as determined by Article I hereof and under the reservation therein contained; but the protection of the banks on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change."

In 1889 the International Boundary Commission was authorized by the treaty of 1889 between the United States and Mexico. 26 U.S. Stat. 1512. It was created for the special purpose of administering the treaty of 1884 which had adopted for the water boundary between the United States and Mexico the commonly accepted rules of accretion avulsion, and the thalweg.

By the convention or treaty of 1905 between the United States and Mexico the two countries adopted a different rule from that of accretion, erosion, and avulsion in regard to their common river boundaries. 35 U.S. Stat. 1863. By this convention the rule of the transfer of cutoffs (bancos) was adopted. (A cutoff or banco is that area of land enclosed by an oxbow bend of the old river channel and a new bed or channel which has been avulsively cut, thereby eliminating the oxbow or bend of the river.)

The convention of 1905 reads in part as follows:

"Article I

"The fifty-eight (58) bancos surveyed and described in the report of the consulting engineers, dated May 30, 1898, to which reference is made in the record of proceedings of the International Boundary Commission, dated June 14, 1898, and which are drawn on fifty-four (54) maps on a scale of one to five thousand (1 to 5,000), and three index maps, signed by the Commissioners and by the Plenipotentiaries appointed by the convention, are hereby eliminated from the effects of Article II of the Treaty of November 12, 1884.

"Within the part of the Rio Grande comprised between its mouth and its confluence with the San Juan River the boundary line between the two countries shall be the broken red line shown on the said maps—that is, it shall follow the deepest channel of the stream—and the dominion and jurisdiction of so many of the aforesaid fifty-eight (58) bancos as may remain on the right bank of the river shall pass to Mexico, and the dominion and jurisdiction of those of the said fifty-eight (58) bancos which may remain on the left bank shall pass to the United States of America.

"Article II

"The International Commission shall, in the future, be guided by the principle of elimination of the bancos established in the foregoing article, with regard to the labors concerning the boundary line throughout that part of the Rio Grande and the Colorado River which serves as a boundary between the two nations. There are hereby excepted from this provision the portions of land segregated by the change in the bed of the said rivers having an area of over two hundred and fifty (250) hectares, or a population of over two hundred (200) souls, and which shall not be considered as bancos for the purposes of this treaty and shall not be eliminated, the old bed of the river remaining, therefore, the boundary in such cases.

"Article III

"With regard to the bancos which may be formed in future, as well as to those already formed but which are not yet surveyed, the Boundary Commission shall proceed to the places where they have been formed, for the purpose of duly applying Articles I and II of the present convention, and the proper maps shall be prepared in which the changes that have occurred shall be shown, in a manner similar to that employed in the prepara-

tion of the maps of the aforementioned fifty-eight (58) bancos.

"As regards these bancos, as well as those already formed but not surveyed, and those that may be formed in future, the Commission shall mark on the ground, with suitable monuments, the bed abandoned by the river, so that the boundaries of the bancos shall be clearly defined.

"On all separated land on which the successive alluvium deposits have caused to disappear those parts of the abandoned channel which are adjacent to the river, each of the extremities of said channel shall be united by means of a straight line to the nearest part of the bank of the same river.

"Article IV

"The citizens of either of the two contracting countries, who, by virtue of the stipulations of this convention, shall in future be located on the land of the other may remain thereon or remove at any time to whatever place may suit them, and either keep the property which they possess in said territory or dispose of it. Those who prefer to remain on the eliminated bancos may either preserve the title and rights of citizenship of the country to which the said bancos formerly belonged, or acquire the nationality of the country to which they will belong in the future.

"Property of all kinds situated on the said bancos shall be inviolably respected, and its present owners, their heirs, and those who may subsequently acquire the property legally, shall enjoy as complete security with respect thereto as if it belonged to citizens of the country where it is situated."

With this treaty or convention of 1905 several questions arise. Does the treaty or the commission transfer sovereignty? Is the transfer an act of cession, an adjustment and location of an international boundary, or a mere relinquishment of a claim by one State in favor of the other State over a disputed area? What is the date on which the change takes effect? These questions and the treaty of 1905 were to be dealt with by the Texas courts in 1932 (to be treated later in this brief).

As soon as the International Boundary Commission had been set up (1895) as authorized by the treaty of 1889, Mexican claims regarding land in the Chamizal area were presented to it which claims related to Rio Grande bed changes that occurred in the 1860's and 1870's. These claims were never satisfactorily answered by the Commission. The consequence of the continuing dispute concerning El Chamizal was that the United States and Mexico entered into the Arbitration Convention of 1910 (36 U.S. Stat. 2481). By the terms of the Arbitration Treaty of 1910 the United States and Mexico agreed to submit their controversy over El Chamizal to a Commission composed of three persons, Gen. Anson Mills for the United States; Senor Fernando Beltrán y Puga, of Mexico; and Mr. Eugene Lafleur, of Canada.

Mexico claimed that the boundary between the United States and Mexico (El Chamizal) follows the channel of the Rio Grande of 1852, and that it was a fixed boundary not subject to change or changes brought about by accretion. The United States claimed that this boundary being a river boundary moved with the river when the river changed its location by accretion, in accordance with the universal rule of law governing river boundaries between private individuals, States, and nations. The United States further claimed that the river had, between 1852 and 1911, moved south by accretion and that under well-established principles of law, the river should remain the boundary.

The United States introduced evidence before the Commission showing conclusively that the Rio Grande did move from its 1852 position to its 1911 position by accretion. Mexico did not attempt to meet this evi-

dence. Instead Mexico relied upon its claim that this was a fixed boundary following the center of the river of 1852 as shown by the Emory and Salazar Survey.

The opening words of the Arbitration Agreement of 1910 read:

The United States of America and the United States of Mexico desire to terminate in accordance with the various treaties and conferences now existing between the two countries, and in accordance with international law, the differences which have arisen between the two Governments as to the International Title of the Chamizal Tract * * *

The agreement further provides:

"The Commission shall decide solely and exclusively as to whether the International Title to the Chamizal Tract is in the United States of America or Mexico. The decision of the Commission, whether rendered unanimously or by a majority vote of the Commissioners shall be final and conclusive upon both Governments and without appeal."

The treaty does not provide that the Commissioners could reach any decision placing a portion of the tract in Mexico and a portion of the tract in the United States. This is understandable, since Mexico is claiming that the entire tract was in Mexico because it was south of the fixed boundary (according to Mexico's theory); namely, the position of the river in 1852, and the evidence was overwhelmingly to the effect that if it was not a fixed boundary, the river had moved to its 1911 location by accretion. When the case was closed and the Commissioners made a decision, the Commission decided that this boundary was not a fixed boundary, as Mexico claimed, but was a river boundary to which the general principles of accretion and avulsion applied. The Canadian Commissioner then applied a doctrine which was theretofore unknown to the law. He found that the river moved by accretion from 1852 until 1864. He then held that in 1864 the river moved rapidly by accretion, and that so rapid was this accretion that it should be given the same treatment as though it had been an avulsive change.

He therefore held that the true boundary was the middle of the river as it ran in 1864. There was, however, no evidence introduced to fix the location to the river in 1864. There was nothing on the ground to show where it was, and no one then or since was or has been able to see where the river was in 1864. The Mexican Commissioner joined with the Canadian Commissioner in this novel and wholly incomplete decision, and the two Commissioners proceeded to hold: " * * * that the International Title to the portion of the Chamizal Tract lying between the middle of the bed of the Rio Grande as surveyed by Emory and Salazar in 1852 and the middle of the bed of the said river as it existed before the flood of 1864, is in the United States of America, and the International Title to the balance of the said Chamizal Tract is in the United States of Mexico."

Gen. Anson Mills filed a sound and convincing dissenting opinion pointing out the following reasons why the decision was not binding on the parties:

1. The Commission was wholly without authority or jurisdiction to segregate or separate El Chamizal. The Commissioners were authorized to decide only whether the entire Chamizal area was in the United States or in Mexico and were not authorized to place a part of the tract in the United States and a part of the tract in Mexico.

2. The Commission had rendered a decision that was contrary to the rules set out in the arbitration treaty of 1910 requiring that any decisions rendered by said Commission be made in accordance with the various treaties and conventions then existing between the two countries and in accordance with the principles of international law. In

fact, the decision was based upon a principle theretofore unknown to the law and was not supported by any of the treaties and conventions theretofore existing between the United States and Mexico. Nor was the decision in accordance with the general principles of international law.

3. The Commission rendered a decision that was so vague, indeterminable, and uncertain in its terms and provisions, so as to be impossible of execution.

Thus the United States refused to accept the decision of the Arbitration Commission authorized under the treaty of 1910. Thus, the Chamizal dispute remained with us.

In the year 1922, the Congress of the United States granted sovereignty over the bancos transferred by the treaty of 1905 to the United States and any bancos that might be formed in the future on the left side of the Rio Grande under the treaty of 1905 to the State of Texas (42 U.S. Stat. 359). In 1923, the State of Texas accepted this grant of sovereignty from the United States by legislative acts (Acts 38th Legislature, R.S. 1923, ch. 101, p. 200).

In 1932 three cases were decided by the Texas Court of Civil Appeals, El Paso, in which the court apparently recognized the right of the United States to enter into the treaty of 1905 with Mexico and thereby in effect to transfer dominion and sovereignty over bancos on the American side of the new channel of the Rio Grande to the United States from Mexico without consulting with the State of Texas in regard thereto. *San Lorenzo Title and Improvement Co. v. Clardy*, 48 S.W. 2d 315, affirmed 124 Tex. 31, 73 S.W. 2d 516; *San Lorenzo Title and Improvement Co. v. Caples*, 48 S.W. 2d 329, affirmed 124 Tex. 33, 73 S.W. 2d 516; *San Lorenzo Title and Improvement Co. v. City Mortgage Co.*, 48 S.W. 2d 310, affirmed 124 Tex. 25, 73 S.W. 2d 513. In the above-cited cases the court, by acknowledging the validity of the treaty of 1905, also recognized by implication the right of the United States to transfer sovereignty and control over bancos on the Mexico side of the new channel to Mexico. The court in effect held that, by the terms of the treaty of 1905, such transfers were brought about by the adjusting or ascertaining of an international boundary.

In 1934 in the case of *Willis v. First Real Estate and Investment Co.* (C.C.A. 5), 68 F. 2d 671, the court held that, by the treaty of 1905, a banco on the north side of the Rio Grande became Texas territory. The court stated that this change of sovereignty and dominion was not a cession of territory, but was a definitive boundary decision as to all banco lands involved. Stated another way, the court held the treaty of 1905 to be an adjustment and location of an international boundary.

In 1941 the court of civil appeals in El Paso held in the case of *Fragoso v. Cisneros*, 154 S.W. 2d 991, error ref. w.o.m., that, by the treaty of 1905, the United States and Mexico adjusted and located their common boundary. The court also held that from the date of the treaty the eliminated banco in question had become a part of Texas and had been subject to its civil and criminal laws.

CURRENT ACTION ON SETTLEMENT OF CHAMIZAL DISPUTE

Currently there is renewed effort on the part of the United States and Mexico to reach a settlement on El Chamizal. This settlement is proposed to be by treaty between the two countries and would amount to a compromise of both the claim of the United States to land and sovereignty thereover in the El Paso area and the claim of Mexico to land and sovereignty thereover in this area. Roughly stated, the United States would give up claim to the south portion of El Chamizal and Mexico would give up a claim to the north portion of Cordova Island, a banco adjacent to El Chamizal and owned by Mexico.

The Rio Grande would be rectified so as to mark, and in fact be, the new boundary between the United States and Mexico in the compromised area of El Chamizal and Cordova Island. It is also in the proposed plans to have the owners of American claims to property in the transferred area of El Chamizal reimbursed for their property losses at replacement costs (this is higher than fair market value in this area).

CAN THE UNITED STATES AND MEXICO, BY TREATY, PLACE THEIR COMMON BOUNDARY (RECTIFY THE RIO GRANDE) SO AS TO RUN THROUGH THE MIDDLE OF THE CHAMIZAL TRACT WITHOUT THE CONSENT OF THE STATE OF TEXAS?

(A) Settlement considered as the adjustment and location of a boundary

The United States, under the treaty-making powers of the Constitution of the United States, can settle the Chamizal question through a treaty with Mexico by which the Rio Grande is rectified so as more or less to divide the Chamizal area and Cordova Island, thereby placing part of each under the sovereignty and jurisdiction of the United States and Mexico respectively (as currently proposed). The north part of Cordova Island would thereby become a part of Texas as to State sovereignty and jurisdiction. Considering the proposed settlement by the United States as an adjustment and location of a boundary, the following Texas and Federal court authorities would sustain the proposition that the State of Texas need not be consulted about the El Chamizal settlement. *San Lorenzo Title and Improvement Co. v. City Mortgage Co.*, 124 Tex. 25, 73 S.W. 2d 513; *San Lorenzo Title and Improvement Co. v. Clardy*, 48 S.W. 2d 315, affirmed 124 Tex. 31, 73 S.W. 2d 516; *San Lorenzo Title and Improvement Co. v. Caples*, 48 S.W. 2d 329, affirmed 124 Tex. 33, 73 S.W. 2d 516; *Willis v. First Real Estate and Investment Co.* (C.C.A. 5), 68 F. 2d 671.

The case of *Fragoso v. Cisneros*, 154 S.W. 2d 991, error ref. w.o.m., is to the same general effect. In the *Fragoso* case, the court of civil appeals held that, from the effective date of the Banco Treaty of 1905, eliminated bancos on the north side of the Rio Grande became a part of Texas and that such territory was at that time subject to both the civil and criminal laws of the State. The court did say, however, that it was wise for the United States to cede jurisdiction and sovereignty over bancos already formed or to be formed on the Rio Grande to Texas and for Texas to accept such cession of sovereignty and jurisdiction as was done by the U.S. Congress in 1922 and the Texas Legislature in 1923 thereby forever putting to rest any question as to the true status of such territory.

We consider that the proposed settlement of the Chamizal problem could be handled as an adjustment and location of a boundary.

(B) Settlement considered as a cession of territory

The following authorities would hold that, under the treaty-making powers of the United States, paragraph 2, section 2, article II of the Constitution of the United States, the proposed settlement could be entered into by the United States and Mexico without the consent of the State of Texas even if this should be considered a cession of territory. Alexander Hamilton as reported in "Ford's Writings of Jefferson," volume 5, page 443; Chief Justice John Marshall as reported in Moore's International Law Digest, volume 5, page 173; Charles Henry Butler, "Treaty Making Powers of the United States," II, page 393; T. D. Woolsey, "Introduction to the Study of International Law," pages 167-168; Chancellor Kent, "Commentaries on American Law," lecture 8.1, page 167.

However, dicta in three U.S. Supreme Court cases indicates that before the United States can cede State territory under the treaty-

making power of the United States, State acceptance must be obtained. *Downes v. Bidwell*, 182 U.S. 244 (1929); *De Geofray v. Riggs*, 133 U.S. 258 (1889); *Fort Leavenworth v. Lowe*, 114 U.S. 525 (1884). In the *Downes* case the Court (dicta) did indicate that it was of the opinion in cases of "the exigency of calamitous war or the necessity of a settlement of boundaries" State territory might be ceded by the United States without the consent of the State.

(C) Texas as an actual owner of land in the disputed Chamizal area

A search of the general land office records indicates that Texas has granted to private parties all of the former State-owned, upland, public land in the Chamizal area. However, the State has claimed ownership of the bed of the Rio Grande from its north bank to the center of its stream. This claim is based upon the following reasoning: (1) The United States and Mexico, under the treaty of Guadalupe Hidalgo (1848), recognized and established the Rio Grande as the boundary between the two countries (center of the stream or riverbed); (2) Texas retained the ownership of her public lands upon coming into the United States as a State in 1846; and (3) the Republic of Texas claims sovereign ownership of the bed of navigable streams (i.e., streams with an average width of 30 feet) within her boundaries.

If the bed of the Rio Grande arrived at its present location in the Chamizal area by the process of accretion and erosion then the State of Texas owns the bed from its north bank to the center of the stream as presently located in this area. If this present bed is abandoned and the boundary between the United States and Mexico moved to the north then the State of Texas has lost its claim to one-half of the river bed. This land and Texas' claim thereto probably has little value but it is something that the State would be losing or giving up. It seems unlikely that the United States would object to giving to the State of Texas title to the north half of new river bed and this should be requested.

CONCLUSION

Upon the theory that the action proposed to be taken in settling the Chamizal question is an adjustment and location of the boundary between the United States and Mexico, the consent of the State of Texas is not necessary.

In order to eliminate any doubts as to the sovereignty of Texas attaching to the territory to be acquired by the United States, United States and Texas legislative action might be considered advisable. However, the Texas Supreme Court by approving the opinion of the court of civil appeals in the case of *San Lorenzo Title and Improvement Co. v. Clardy*, supra, seems to have recognized that Texas sovereignty and jurisdiction attached immediately to territory acquired by the United States under the treaty of 1905. The present proposed settlement seems to be a similar situation.

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Art. II, sec. 2, par. 2, U.S. Constitution.

1 Laws of the Republic of Texas 133, 1 Gammel 1193.

9 U.S. Stat. 926, sec. 5.

23 U.S. Stat. 1011.

26 U.S. Stat. 1512.

35 U.S. Stat. 1863.

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Mr. SPARKMAN. Mr. President, I yield back the remainder of my time.

Mr. TOWER. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time for debate has been yielded back. The question is on advising and consenting to the convention with Mexico for solution of the problem of the Chamizal. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Louisiana [Mr. ELLENDER], the Senator from Tennessee [Mr. GORE], the Senator from Arizona [Mr. HAYDEN], the Senator from Missouri [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Oklahoma [Mr. MONROE], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Tennessee [Mr. WALTERS], and the Senator from Arkansas [Mr. FULBRIGHT] are absent on official business.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the aforementioned Senators would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOTT],

the Senator from Kansas [Mr. CARLSON], and the Senator from Iowa [Mr. HICKENLOOPER] are absent on official business to accompany the President of the United States to the United Nations.

The Senator from Colorado [Mr. DOMINICK] and the Senator from New Mexico [Mr. MECHEM] are necessarily absent.

The Senator from Pennsylvania [Mr. SCOTT] is absent on official business to attend the presidential inauguration in Korea.

The Senator from Wyoming [Mr. SIMPSON] is absent because of illness in his family.

The Senator from Kansas [Mr. PEARSON] is detained on official business.

The Senator from Delaware [Mr. BOGGS] is necessarily absent attending the funeral of a friend.

If present and voting, the Senator from Colorado [Mr. ALLOTT], the Senator from Delaware [Mr. BOGGS], the Senator from Kansas [Mr. PEARSON], the Senator from Pennsylvania [Mr. SCOTT], and the Senator from Wyoming [Mr. SIMPSON] would each vote "yea."

The yeas and nays resulted—yeas 79, nays 1, as follows:

[No. 271 Ex.]

YEAS—79

Alken	Haitke	Moss
Anderson	Hill	Mundt
Bartlett	Holland	Muskie
Bayh	Hruska	Nelson
Beall	Humphrey	Neuberger
Bennett	Inouye	Pastore
Bible	Jackson	Pell
Brewster	Javits	Prouty
Burdick	Johnston	Proxmire
Byrd, Va.	Jordan, N.C.	Ribicoff
Byrd, W. Va.	Jordan, Idaho	Robertson
Cannon	Keating	Russell
Case	Kennedy	Saltonstall
Clark	Kuchel	Smathers
Cooper	Lausche	Smith
Cotton	Long, La.	Sparkman
Curtis	Mansfield	Stennis
Dirksen	McCarthy	Symington
Dodd	McClellan	Talmadge
Douglas	McGee	Thurmond
Eastland	McGovern	Williams, N.J.
Edmondson	McIntyre	Williams, Del.
Ervin	McNamara	Yarborough
Fong	Metcalf	Young, N. Dak.
Goldwater	Miller	Young, Ohio
Gruening	Morse	
Hart	Morton	

NAYS—1

Tower

NOT VOTING—20

Allott	Fulbright	Monroney
Boggs	Gore	Pearson
Carlson	Hayden	Randolph
Church	Hickenlooper	Scott
Dominick	Long, Mo.	Simpson
Ellender	Magnuson	Walters
Engle	Mechem	

The PRESIDING OFFICER. On this vote the yeas are 79 and the nays are 1. Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification on Executive N is agreed to.

Mr. MANSFIELD. Mr. President, when the late President Kennedy made an official visit to Mexico last year, I was privileged to accompany him. During the course of this mission, he held a number of conferences with one of the leading statesmen of this hemisphere, the President the United Mexican States, the Honorable Adolfo Lopez Mateos.

At one of these meeting the question of the Chamizal was discussed in great

detail and at that time President Kennedy made a commitment to the effect that he would do everything within his power, subject to senatorial approval, to bring about a settlement of this question which had strained relations between our two countries for so many decades.

As one who was sitting in on these meetings at the request of President Kennedy, I can state they were conducted on a frank, detailed, and understanding basis and that the decision by President Kennedy to expend every effort to bring about an equitable settlement was approved wholeheartedly by those in attendance. As a result of many months of negotiations, an equitable agreement was arrived at. This agreement has now been ratified by the Senate and, in my opinion, it marks a milestone in good relations between our two countries. I, personally, am very happy that this question has at long last been settled and it is my hope that it will be another indication of the bright and friendly path on which we and Mexico have traveled in recent years and will continue to travel in the future.

On behalf of the Senate, I extend congratulations and a "well done" to the three Chiefs of State responsible for this settlement. I refer, of course, to His Excellency the President of the United Mexican States, the Honorable Adolfo Lopez Mateos; our late President, John Fitzgerald Kennedy; and our present President, Lyndon Baines Johnson, all of whom made significant contributions to this convention and all of whom deserve full credit for their understanding, their tolerance, and their desire to be mutually cooperative in this most important matter.

Mr. HUMPHREY. Mr. President, I ask that the President be immediately notified of the action of the Senate in agreeing to the resolution of ratification.

The PRESIDING OFFICER. Without objection, the President will be immediately notified.

LEGISLATIVE SESSION

Mr. HUMPHREY. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

ENROLLED BILL AND JOINT RESOLUTION SIGNED DURING ADJOURNMENT

Under authority of the order of the Senate of December 12, 1963,

The ACTING PRESIDENT pro tempore on December 16, 1963, signed the following enrolled bill and joint resolution, which had been signed by the Speaker of the House of Representatives on December 16, 1963:

H.R. 4338. An act to amend title 37, United States Code, to authorize travel and transportation allowances for travel performed under orders that are canceled, revoked, or modified, and for other purposes; and

H.J. Res. 335. Joint resolution designating the 17th day of December of each year as "Wright Brothers Day".

COMMITTEE MEETING DURING SENATE SESSION

On request of Mr. SPARKMAN, and by unanimous consent, the Committee on Rules and Administration was authorized to meet during the session of the Senate today.

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON REAL AND PERSONAL PROPERTY OF DEPARTMENT OF DEFENSE

A letter from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on real and personal property of that Department, as of June 30, 1963 (with an accompanying report); to the Committee on Armed Services.

REPORT ON FOREIGN CURRENCIES IN THE CUSTODY OF THE UNITED STATES

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a report on foreign currencies in the custody of the United States, fiscal year 1963 (with an accompanying report); to the Committee on Foreign Relations.

REPORT ON LACK OF EFFECTIVE SUPERVISORY CONTROLS OVER CERTAIN GOVERNMENT EMPLOYEES

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the lack of effective supervisory controls over Federal and District of Columbia Government employees licensed to drive taxicabs in the District of Columbia, dated December 1963 (with an accompanying report); to the Committee on Government Operations.

REPORT ON PROCUREMENT OF INACCURATE RADIATION MEASURING INSTRUMENTS

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the procurement of inaccurate radiation measuring instruments, Department of the Army, dated December 1963 (with an accompanying report); to the Committee on Government Operations.

REPORT ON OVERPRICING OF SPARE PARTS PURCHASED FROM HUGHES AIRCRAFT CO.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the overpricing of spare parts purchased from Hughes Aircraft Co., Culver City, Calif., under fixed-price incentive contract AF 33(600)-38280, Department of the Air Force, dated December 1963 (with an accompanying report); to the Committee on Government Operations.

REVIEW OF ECONOMIC ASPECTS OF LOAN FOR CONSTRUCTION OF WATER SUPPLY SYSTEM IN SAIGON, VIETNAM, DEVELOPMENT LOAN FUND

A letter from the Director, Congressional Liaison, Agency for International Development, Department of State, transmitting, for the information of the Senate, a copy of that Agency's reply to the Comptroller General of the United States, relating to his report on a review of economic aspects of loan for construction of water supply system in Saigon, Vietnam, Development Loan Fund (with an accompanying paper); to the Committee on Government Operations.

REPORT ON COMPETITION IN SYNTHETIC RUBBER INDUSTRY

A letter from the Attorney General, transmitting, pursuant to law, a report on competition in the synthetic rubber industry, for calendar year 1961 (with an accompanying report); to the Committee on the Judiciary.

RESOLUTION OF MAYOR AND COUNCIL OF CITY OF TUCSON, ARIZ.

The ACTING PRESIDENT pro tempore laid before the Senate a resolution adopted by the mayor and council of the city of Tucson, Ariz., relating to the death of the late President John F. Kennedy, which was ordered to lie on the table.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. McNAMARA, from the Committee on Public Works, with amendments:

S.J. Res. 136. Joint resolution to provide for renaming the National Cultural Center as the John Fitzgerald Kennedy Memorial Center, and authorizing an appropriation therefore (Rept. No. 784).

BILL INTRODUCED

A bill was introduced, read the first time, and, by unanimous consent, the second time, and referred, as follows:

By Mr. SPARKMAN (by request):

S. 2394. A bill to facilitate compliance with the Convention between the United States of America and the United Mexican States, signed August 29, 1963, and for other purposes; to the Committee on Foreign Relations.

(See the remarks of Mr. SPARKMAN when he introduced the above bill, which appear under a separate heading.)

TO FACILITATE COMPLIANCE WITH CONVENTION BETWEEN THE UNITED STATES AND THE UNITED MEXICAN STATES

Mr. SPARKMAN. Mr. President, by request, I introduce, for appropriate reference, a bill to facilitate compliance with the convention between the United States of America and the United Mexican States, signed August 29, 1963, and for other purposes.

The proposed legislation has been requested by the Department of State and I am introducing it in order that there may be a specific bill to which members of the Senate and the public may direct their attention and comment.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it when the matter is considered by the Committee on Foreign Relations.

However, I do believe that we ought to have a measure before us to start on. Therefore, I am introducing the bill.

I ask unanimous consent that the bill may be printed in the RECORD at this point, together with the letter from the Secretary of State and a statement entitled "Program for Implementation, With Cost Estimates."

The PRESIDING OFFICER (Mr. INOUYE in the chair.) The bill will be received and appropriately referred; and, without objection, the bill, letter, and statement referred to by the Senator from Alabama will be printed in the RECORD.

The bill (S. 2394) to facilitate compliance with the Convention between the United States of America and the United Mexican States, signed August 29, 1963, and for other purposes introduced by Mr.

SPARKMAN, by request, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "American-Mexican Chamizal Convention Act of 1964."

SECTION 1. In connection with the Convention between the United States of America and the United Mexican States for the Solution of the Problem of the Chamizal, signed August 29, 1963, the Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico, is authorized:

a. To conduct technical and other investigations relating to: the demarcation or monumentation of the boundary between the United States and Mexico; flood control; water resources; sanitation and prevention of pollution; channel relocation, improvement and stabilization; and other matters related to the new river channel.

b. To acquire by donation, purchase or condemnation, all lands required:

(1) for transfer to Mexico as provided in said Convention;

(2) for construction of that portion of the new river channel and the adjoining levee in the territory of the United States;

(3) for relocation of highways, roadways, railroads, telegraph, telephone, electric transmission lines, bridges, related facilities and any publicly owned structure or facility, the relocation of which, in the judgment of the said Commissioner, is necessitated by the project.

c. For the purpose of effecting said relocations:

(1) to perform any or all work involved in said relocations;

(2) to enter into contracts with the owners of properties to be relocated whereby they undertake to acquire any or all properties needed for said relocations, or undertake to perform any or all work involved in said relocations;

(3) to convey or exchange properties acquired or improved by the United States under this Act or under said Convention, with or without improvements, or to grant term or perpetual easements therein or thereover.

SEC. 2. The United States Commissioner is authorized to construct, operate and maintain all works provided for in said Convention and this Act, and to turn over the operation and maintenance of any of such works to any Federal agency, or any State, county, municipality, district or other political subdivision within which such project or works may be in whole or in part situated, upon such terms, conditions and requirements as the Commissioner may deem appropriate.

SEC. 3. The United States Commissioner, under regulations approved by the Secretary of State, and upon application of the owners and tenants of lands to be acquired by the United States to fulfill and accomplish the purposes of said Convention, and to the extent administratively determined by the Commissioner to be fair and reasonable, is authorized to:

a. Reimburse the owners and tenants for expenses and other losses and damages incurred by them in the process and as a direct result of such moving of themselves, their families, and their possessions as is occasioned by said acquisition: *Provided*, That the total of such reimbursement to the owners and tenants of any parcel of land shall in no event exceed 25 per centum of its fair value, as determined by the Commissioner. No payment under this subsection shall be made unless application therefor is supported by an itemized and certified state-

ment of the expenses, losses and damages incurred.

b. Compensate the said owners and tenants for identifiable, reasonable, and satisfactorily proved costs and losses to owners and tenants over and above those reimbursed under the foregoing subsection in the categories hereinafter provided, and for which purpose there shall be established by the Commissioner a Board of Examiners, consisting of such personnel employed and compensation fixed as he deems advisable, without regard to the provisions of the civil service laws and the Classification Act of 1949, as amended. Said Board may hold hearings, and shall examine submitted evidence and make determinations, subject to the Commissioner's approval, regarding all claims in said categories, as follows:

(1) For properties:

(a) For non-conforming abodes and minimum forms of shelter for which there are no comparable properties on the market in the City of El Paso and concerning which fair market value would be inadequate to find minimum housing of equal utility, compensation to the owner up to an amount which when added to the market value allowed for his property, including land values, would enable purchase of minimum habitable housing of similar utility in another residential section of said City.

(b) For commercial properties for which there are no comparable properties on the market in or near El Paso, Texas, compensation to the owner up to an amount which when added to the total market value of his properties, including land value, would enable the owner to provide minimum facilities of reasonably equivalent utility in or near said city.

(c) For loss in business:

(a) Loss of profits directly resulting from relocation, limited to the period between termination of business in the old location and commencement of business in the new, such period not to exceed thirty days.

(b) Loss to owner resulting from inability to rent to others housing or warehouse space that can be reasonably related to uncertainties arising out of the pending acquisition of the owner's property by the United States, such losses limited to those incurred after July 18, 1963, and prior to the making by the United States of a firm offer to purchase.

(3) For penalty costs to property owners for prepayment of mortgages incident to acquisition of the properties by the United States.

SEC. 4. Application for reimbursement or compensation under section 3 of this Act shall be submitted to the Commissioner within either one year from the date of acquisition or the date of vacating the premises by the applicant, whichever date is later. Applications not submitted within said period shall be forever barred.

SEC. 5. Payments to be made as herein provided shall be in addition to, but not in duplication of, any payments that may otherwise be authorized by law. The means employed to acquire the property, whether by condemnation or otherwise, shall not affect eligibility for reimbursement or compensation under this Act. Nothing contained in this Act shall be construed as creating any legal right or cause of action against the United States or as precluding the exercise by the Government of the right of eminent domain or any other right or power that it may have under this or any other law; nor shall this Act be construed as precluding an owner or tenant from asserting any rights he may have under other laws or the Constitution of the United States.

SEC. 6. As used in this Act, the term "land" shall include interests in land, and the term "fair value" shall mean fair value of the interest acquired. The provisions of this Act shall be exempt from the operations of the Administrative Procedure Act of June 11,

1946 (60 Stat. 237), as amended (5 U.S.C. secs. 1001-1011).

SEC. 7. There are authorized to be appropriated to the Department of State for the use of the United States section of said Commission such sums as may be necessary to carry out the provisions of said Convention and this Act and for transfer to other Federal agencies to accomplish by them or other proper agency relocation of their facilities necessitated by the project. The provisions of section 108 of the American-Mexican Treaty Act of 1950 (22 U.S.C. 277d-3) are hereby expressly extended to apply to the carrying out of the provisions of said Convention and this Act.

The letter and statement presented by Mr. SPARKMAN are as follows:

DEPARTMENT OF STATE,
Washington, December 12, 1963.

HON. CARL HAYDEN,
President pro tempore,
U.S. Senate.

DEAR SENATOR HAYDEN: President Kennedy submitted to the Senate on October 7, 1963 for advice and consent to ratification the "Convention with Mexico for Solution of the Problem of Chamizal." The Senate Committee on Foreign Relations scheduled hearings on this Convention for December 12 and 13. So that the Congress will have before it the administration's plan for carrying out the Convention, I transmit herewith a draft of a bill entitled "The American-Mexican Chamizal Convention Act of 1964." This bill is presented to authorize the U.S. Commissioner on the International Boundary and Water Commission to execute the Convention in accordance with its terms.

Under the Convention the Governments of the United States and of Mexico would relocate the Rio Grande in the vicinity of El Paso in a concrete-lined channel. The centerline of the new channel would be the international boundary. The effect would be to transfer from the north to the south of the river 823.5 acres of which 386.32 acres are already under Mexican jurisdiction or are being exchanged with Mexico for territory already under its jurisdiction. The net area of 437.18 acres passing to Mexico represents the acreage estimated to have been awarded to Mexico by an arbitral commission in 1911. The ratification of the Convention and the enactment of the proposed legislation will bring an end to a territorial dispute that has concerned both Governments for almost a hundred years.

There is also enclosed a statement entitled "Program for Implementation, with Cost Estimates." This statement explains the content and purpose of the proposed legislation.

The Department of State recommends enactment of this legislation as soon as possible after ratification of the Convention by both Governments.

The Bureau of the Budget advises that, from the standpoint of the administration's program, it has no objection to the submission of this proposed legislation.

Sincerely yours,

DEAN RUSK.

CHAMIZAL CONVENTION: PROGRAM FOR IMPLEMENTATION WITH COST ESTIMATES, DECEMBER 11, 1963

1. GENERAL STATEMENT

The convention between the United States of America and the United Mexican States for the solution of the longstanding Chamizal boundary dispute, signed August 29, 1963, provides for relocation of the channel of the Rio Grande in the El Paso, Texas-Ciudad Juarez, Chihuahua sector, and that the center of the new channel shall be the international boundary. The relocation would have the effect of transferring from the north to the south side of the Rio

Grande a total of 823.50 acres, of which 193.16 acres are already under Mexican jurisdiction, being a portion of Cordova Island.

Subject to ratification of the convention by the two Governments, the United States will acquire the remaining 630.34 acres in the south part of the city of El Paso, Tex., for transfer to Mexico. Mexico will transfer 193.16 acres of its lands, comprising the northerly half of Cordova Island, to the United States, so that the net transfer to Mexico would be 437.18 acres. The United States, in addition, will acquire 102 acres to provide for the U.S. right-of-way for the new channel and relocation of existing railroad tracks, and about 38 additional acres for the relocation of public school and Federal facilities.

The new boundary was located so as to minimize the number of people and value of properties affected. However, there are now more than 4,500 people residing in the affected area of 770.34 acres. Nearly 750 improvements would be acquired, including about 487 residences, mostly 5- to 6-room single-family dwellings of moderate construction, 90 shelters or shacks of 1 to 2 rooms, 21 tenement or low-rent apartment buildings, 130 commercial and 15 Government buildings, and one public school. Also involved are agricultural lands, stock pens and some vacant lots, public utility systems, and a portion of the lands of the city's main sewage treatment plant. Railroads, a stretch of an irrigation canal, and the inspection facilities of several agencies of the Federal Government will have to be relocated.

The International Boundary and Water Commission is charged by the Convention with responsibility for determining the period of time required for acquisition of the lands and evacuation of the residents (art. 6). The U.S. section would acquire the properties in its country for transfer to Mexico and the properties required for half of the new channel and for the relocations. After acquisition and evacuation of the properties and after payment to the United States by the designated Mexican Bank of the estimated value of the structures passing intact to Mexico (\$4,676,000) pursuant to the Convention and to notes exchanged with the Government of Mexico, the Commission is charged: (a) with demarcation of the new boundary and preparation of a minute to record the new boundary, upon approval of which the transfer of lands between the respective countries would take place (art. 7); (b) with determination of the location of the new bridges to replace the Cordova Island bridges (art. 10); (c) and with construction of the new bridges, relocation of the river channel, and the maintenance and preservation and improvement of the new channel (art. 9). The construction of the new channel and bridges will be paid for in equal shares by the two Governments.

2. ESTIMATED MINIMUM COSTS

Preliminary and tentative estimates of the minimum costs for implementation of the treaty are as follows:

[Estimated cost in millions]

1. Market value of 770 acres of land (with 750 improvements) to be acquired for transfer to Mexico and for relocation of the river channel and local public facilities..... \$20.8
2. Relocation of 4.3 miles of the channel of the Rio Grande, the new channel to be concrete-lined, and relocation of 6 existing bridges across the channel. The total cost is estimated at \$6.4 million, and by the treaty the United States will pay 50 percent, or..... 3.2
3. Relocation of 8.9 miles of railroad tracks..... 3.0

[Estimated cost in millions]

4. Relocation of public facilities:
 - (a) As a part of the lands to be acquired there will be the city of El Paso's Navarro primary school and a part of the grounds of the Bowie High School, costs of which are included in the estimates of properties to be acquired. However, their relocation would require additional costs for land and construction tentatively estimated at..... \$0.6
 - (b) There will be acquired a part of the lands of the city's main sewage disposal plant, which will require replacement to permit equal utility of existing facilities, the increased cost of which is tentatively estimated at..... .6
- Subtotal..... 1.2
- Total..... 28.2
5. Administration costs—estimated at 4 percent..... 1.1
- Estimated treaty cost..... 29.3
6. Less payment by Mexico pursuant to the Convention for value of structures which pass intact to Mexico..... -4.7
- Estimated net minimum cost... 24.6
7. Less the estimated market value of the 193.18 acres of Cordova Island which will be transferred to the United States..... -6.0
- Net minimum effective cost.... 18.6

3. ADEQUATE COMPENSATION TO PROPERTY OWNERS AND TENANTS

The preliminary and tentative cost estimates are based upon acquisition under present minimum Federal authorizations for public projects.

Surveys show that there would be an adverse social and economic impact on most of the occupants. To some 90 families there would be very serious impact in that under present Federal authorizations for public projects, compensation which they would receive for their substandard dwellings would be inadequate to purchase another home, for the reason that there are few, if any, like dwellings on the market. Moreover, such compensation would not be sufficient to prevent loss for a number of special-purpose commercial enterprises in the affected area whose owners would have to build new plants to stay in business, requiring otherwise unnecessary expenditures without reimbursement. Further, present authorizations do not allow reimbursement for penalty costs for prepayment of mortgages, and loss of business during a move or due to pending acquisition of properties.

The Department of State and the U.S. Commissioner on the International Boundary and Water Commission recommend in this unique and unprecedented situation where private properties in the United States would be acquired for transfer to another country to settle an international dispute, that the enabling legislation for implementation of the treaty include provisions to protect the property owners and tenants against resulting economic hardship and loss by allowing reimbursement to cover reasonable, just, and identifiable costs over and above those for which minimum Federal authorizations now provide payments; i.e., reimbursement for moving expenses not to exceed 25 percent of the fair value of the lands, for loss of business directly resulting

from and during relocation, for penalty costs for prepayment of mortgages on properties to be acquired; and on private properties for which there is no active market, reimbursement up to an amount which, when added to the market value of the properties, would enable purchase of minimum facilities of similar utility. A Board of Examiners would be created to pass on most of these reimbursable items.

The preliminary and tentative estimated cost of providing the reimbursements outlined above to protect property owners and tenants against economic hardship and loss amounts to \$4 million.

4. RELATED FEDERAL FACILITIES

Implementation of the Convention will require relocation of three U.S. port of entry inspection facilities at El Paso, which are located in the area which would pass to Mexico. These include facilities for the Immigration and Naturalization Service, Customs Service, Plant Quarantine Division of the Department of Agriculture, and Public Health Service:

1. Port of entry facilities at Santa Fe Street, for entries from Mexico: This facility consists of leased property and buildings which will pass to Mexico.

2. Inspection facilities at Stanton Street, where people cross from the United States into Mexico: Inspection facilities here are housed in one leased building which will be eliminated by the river relocation project.

3. Port of entry facilities at the Cordova Island crossing: Facilities here consist of temporary shelters and trailers, since this is a recently established crossing. Building of a permanent structure, authorized at an estimated cost of \$1,100,000 has been deferred pending outcome of Chamizal negotiations and the General Services Administration is holding in reserve funds which had been appropriated for construction of the permanent Cordova Island border station.

4. Border Patrol facilities: The Immigration and Naturalization Service maintains its Border Patrol headquarters and detention camp for illegal entrants in the area to be transferred to Mexico.

The El Paso port handles the largest volume of traffic on the entire Mexican border, now estimated at 30 million people and 6.5 million vehicles annually, and progressively increasing traffic would, in all probability, necessitate some future expansion. But prior to announcement of the Chamizal settlement there were no plans for enlarging or relocating the Santa Fe Street, Stanton Street, or Border Patrol facilities.

The new facilities should, of course, be designed according to estimates of traffic growth but their construction at this time will be a direct result of the Chamizal settlement. Preliminary and tentative estimates by the General Services Administration indicate that providing new facilities will require acquisition of: (1) about 7.5 acres of land on Santa Fe Street, (2) 0.5 acres of Stanton Street adjacent to the new river channel, and (3) about 20 acres for the Border Patrol Sector Headquarters and Detention Camp. Lands required for customs and other inspection at the Cordova Island crossing—some 20 acres—would be available from the Cordova Island lands which pass from Mexico to the United States.

There is also under consideration location of lands in the Cordova area for the Border Patrol Headquarters and Detention Camp, which would negate the need for the 20-acre land purchase mentioned above. In any event, however, the required inspection facilities construction program will be considerably greater than that previously con-

templated. Estimates indicate the following:

	Million
1. Land acquisition for new facilities.....	\$1.2
2. Cost of buildings.....	6.0
3. Less appropriations already available for new facilities.....	-1.1

Net total for Federal facilities (preliminary and tentative)..... 6.1

The U.S. section of the Commission should acquire the lands for the facilities so that all acquisitions can be properly coordinated and conducted under the same policies and authorizations.

Estimated appropriations required

	Million
1. Estimated treaty costs.....	\$29.3
2. Compensation to property owners to avoid injury.....	4.0
3. Estimated costs, relocation and expansion port-of-entry inspection facilities.....	6.1

Total estimated appropriations required..... 39.4

5. PROGRAM—TIME SCHEDULE

The schedule for the procurement of lands and improvement contemplates the acquisition and vacating of properties in 2.5 years—by approximately July 1967, at which time the new boundary line would be demarked by the two Governments and territories transferred. There would follow the construction of the channel, levees and miscellaneous structures scheduled to require 1½ years.

During the first 2½ years it will be necessary, however, to construct certain of the relocated works in order that there will be no interruption of traffic flow between the two countries: (1) the railroad and railroad holding yard; (2) the bridges across the site of the new channel; (3) and at least some of the port-of-entry facilities. The design and preparation of plans and specifications for these works are to be accomplished in fiscal year 1965. The invitations for bids, award of contract and initiation of construction are scheduled for early in fiscal year 1966 looking to completion midyear 1967.

The design and preparation of plans and specifications for the construction of the channel, levee and miscellaneous structures are scheduled to get underway late in fiscal year 1965 and will be completed in fiscal year 1966. The invitations for bids, award of contract and the beginning of construction of the channel, levees and miscellaneous structures are programmed for fiscal year 1967 with completion scheduled for fiscal year 1968, 15 months being allowed for the construction.

Mr. YARBOROUGH and Mr. TOWER addressed the Chair.

Mr. SPARKMAN. I will yield first to the junior Senator from Texas [Mr. TOWER], and then to the senior Senator from Texas [Mr. YARBOROUGH].

Mr. TOWER. Could the Senator from Alabama give some indication as to when the Committee on Foreign Relations will act on this measure?

Mr. SPARKMAN. I would say it will probably be the first matter that we will take up after the new year.

Mr. TOWER. I thank the Senator.

Mr. SPARKMAN. The Senator realizes that we do not have time to act on the legislation during this session.

Mr. TOWER. I realize that.

Mr. SPARKMAN. But I can assure both Senators from Texas that it will be one of the early pieces of legislation—perhaps the first piece of legislation—

that we will take up in the new session of Congress.

I now yield to the Senator from Texas [Mr. YARBOROUGH].

Mr. YARBOROUGH. The purpose of my question to the Senator from Alabama is whether hearings on the bill introduced by the Senator from Alabama [Mr. SPARKMAN] would be held expeditiously, and whether the bill being introduced is the bill which would compensate the 4,500 citizens who would be displaced by the rectification of the boundary as a result of the settlement of the disputed territory?

Mr. SPARKMAN. That is correct. The Senator realizes, of course, that there are other things to be considered separately. For example the city of El Paso made four requests.

Mr. YARBOROUGH. That is correct. But the people who are being dispossessed come first. As a condition of obtaining the consent of El Paso and El Paso County, a road which the Federal Government promised to build, along the north bank was requested and also the straightening of the channel of the Rio Grande.

Mr. SPARKMAN. The Senator is correct.

I wish to say to both Senators from Texas that the Foreign Relations Committee, in considering the treaty, what action we should take, and our recommendations to the Senate, expressed interest and concern over the matter.

I thought it was highly important that the proposed legislation be before us when we started discussion of the treaty.

I invite the attention of both Senators from Texas to the last paragraph of page 6 of the report:

The committee is aware of, and understands, the concern of the owners or tenants of the land and properties which would be transferred to Mexico by the United States pursuant to the treaty. People who have resided in the Chamizal area for many years will particularly be faced with difficult adjustments. The committee wishes to assure the people whom the treaty will affect—and the Senate as well—that it intends to act promptly on legislation to implement the Chamizal Convention. In connection with its consideration of that legislation, the committee also wishes to assure the Senate that it will make every effort to insure that provision is made for the payment of adequate and just compensation to the persons who will be dispossessed.

The language is in the report of the committee. I discussed the subject with the chairman of the committee, the Senator from Arkansas [Mr. FULBRIGHT], and he has assured me that implementing legislation will be expeditiously handled by the Foreign Relations Committee.

NATIONAL PARKWAY IN SHAW-ANGUNK - KITTATINNY MOUNTAINS (AMENDMENT NO. 363)

Mr. KEATING. Mr. President, on behalf of myself, the senior Senator from New York [Mr. JAVITS], the Senators from New Jersey [Mr. CASE and Mr. WILLIAMS], and the Senators from Pennsylvania [Mr. CLARK and Mr. SCOTT], I send

to the desk an amendment to Senate bill 1971.

Our bill, originally introduced on August 2, authorized a survey of a proposed national parkway in the Shawangunk-Kittatinny Mountain Range, extending from the vicinity of Stroudsburg, Pa., northeast to Kingston, N.Y. It was our intention that this parkway be modeled after the Blue Ridge Parkway—that is, a scenic road, free of undesirable commercial development, which would in no way destroy the natural wilderness character of the area. Our bill had the support of many local organizations and government officials in all three States.

However, in the past few months many conservationists have expressed concern that a six-lane highway was contemplated which would totally change this beautiful mountain country. We offer this amendment today to clarify our position and state more fully the objective of our bill.

To begin, I would like to reiterate that our bill does not authorize any construction, but merely a feasibility survey.

Second. Under no circumstances do we intend to ruin the wildernesslike character or change substantially the geographic features of the area. Our primary objective, in fact, is to preserve the area, while making it more accessible to those people who cherish the undeveloped outdoors.

Third. We most certainly have not taken a "parkway or nothing" stand, and in the event a parkway is not feasible, or would destroy the scenery, we have asked the Departments of Interior and Commerce to recommend the best means of preserving the area from undesirable commercial development and providing appropriate protection of the natural beauty of the area. Our amendment clarifies all these points, and I ask unanimous consent that it be printed in the CONGRESSIONAL RECORD at this point in my remarks.

The PRESIDING OFFICER. The amendment will be received, printed, and appropriately referred, and, without objection, will be printed in the RECORD.

The amendment submitted by Mr. KEATING, for himself and other Senators, was referred to the Committee on Interior and Insular Affairs, as follows:

On page 2, line 15, immediately after the period, insert the following:

"In determining the exact location of any such parkway, the Departments of the Interior and Commerce shall make every effort to route such parkway in a way which would avoid the altering or changing of the wilderness-like character and geographic features of the area comprising the Shawangunk-Kittatinny Mountains. In the event that the Departments determine that a scenic parkway is not feasible in this location, or would necessarily destroy the wilderness character of the area, they are directed to make recommendations on the best means of preserving this area from undesirable commercial development and providing appropriate protection of the natural beauty of the area."

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc.,

were ordered to be printed in the RECORD, as follows:

By Mr. BURDICK:

Address entitled "Flaxseed and Farm Policies," delivered by Senator McGovern before the Flax Institute of the United States, Fargo, N. Dak., on November 15, 1963.

OREGON DUNES

Mr. MORSE. Mr. President, I ask unanimous consent to have printed in the RECORD a letter which I received from Mrs. Paul H. Waggener in support of my position on the condemnation amendment in the Oregon Dunes National Seashore bill; also an editorial published in one of the newspapers, entitled "MORSE Stands by His Word on Dunes Bill"; and also an editorial published in the Siuslaw News of December 12, 1963, entitled "For the People."

There being no objection, the letter, article, and editorial were ordered to be printed in the RECORD, as follows:

GARDINER, OREG.,
December 14, 1963.

Hon. WAYNE MORSE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MORSE: Your stand against condemnation in the Oregon Dunes National Seashore bill is certainly in accord with views of your constituents. Last summer we talked with many Oregon residents, who came here to fish, about this national park issue. They were all vehemently opposed to condemnation and the vast majority were opposed to a national park in the area. The frequent comment was "Why do they want to spoil it with a national park?" Your stand is greatly appreciated and has gained you many friends. I am enclosing editorial and news items from the Siuslaw News, Florence, regarding your views.

In a news item in the Oregonian, November 22, 1963, the concept of the 500 feet of "buffer zone" was explained, stating that property owners "would be required to keep the land in its natural state." We would be included in that buffer zone. We have a business. Most people think our property very attractive, but its "natural state" would be a thick growth of brush. Also, how would one operate a business with any feeling of security with a Government scenic easement hanging over their heads.

This article also states: "This feature is designed primarily to apply to the stretch of highway south of Lake Tahkenitch, where the road bends eastward and both sides of the highway are outside the park." This stretch of property is owned by the E. G. Sparrow family and we have a letter in our file from Mr. Sparrow which states the property is not for sale and will be kept in a tree farm for future generations. Hence we see little need for any "scenic easement." We also feel that it is such a waste of taxpayers money to spend over \$6 million when there is really no need to preserve the area for future generations or to provide recreation. It is already preserved and recreation is now being provided.

I was delighted to read in the Oregonian of your support for the Mundt bill re sale of wheat to Russia and your resentment over the inference of disloyalty to the President if you voted for it. When we reach the stage in America when we cannot criticize our President's views, we are too far on the road to dictatorship. I thought one of the most significant things President Johnson said in his address to Congress was that he would respect the independence of the legislative branch.

Your diligent work in cutting foreign aid has evoked much favorable comment in this area also. Most people are not against foreign aid but they are getting mighty tired of the waste and ill chosen use of it. Your efforts resulting in the establishment of the Indian School at Tongue Point are very commendable.

A merry Christmas to you and all your family. I enjoyed the picture of Judy in your newsletter some time back.

Sincerely,

FLORENCE E. WAGGENER.
(Mrs. Paul H.)

MORSE STANDS BY HIS WORD ON DUNES BILL (By Jack Parker)

Telegrams, letters, and postal cards were sent from the Siuslaw area and from other parts of Oregon during the past week to Senator WAYNE MORSE thanking him for his stand on the dunes park bill, which recently cleared the Senate Interior Committee. The messages came from individuals as well as organizations.

Senator MORSE told his colleagues that he was absolutely opposed to the condemnation provision in the bill. He stated, "We could create an adequate park with public property only. In fact, it is more park than the public would ever use." More than 4 years ago Senator MORSE announced his stand against condemnation of private property at a luncheon meeting in Florence.

Although he is not a member of the Interior Committee, as the senior Senator from Oregon and as a vigorous spokesman, he is expected to play a major role in determining the fate of the latest park proposal. Already he has asked Senator MIKE MANSFIELD, majority leader, to delay action on the bill until "more negotiations can be accomplished at both the Federal and State level."

Secretary of the Interior Stewart L. Udall was severely criticized by Senator MORSE. The Secretary, he stated, "took it upon himself to ignore me and to ignore those people of Oregon who share the viewpoint of their senior Senator with regard to the dunes park."

Also opposed to condemnation as well as the purpose of the bill are four members of the committee: Senators GORDON ALLOTT, EDWIN MECHEM, MILWARD L. SIMPSON, and LEN B. JORDAN. In a minority report they stated, "We have serious misgivings about the necessity of a national seashore area in Oregon. We are opposed to including in our national park system lands which are properly being administered by the National Forest Service and lands which are within the jurisdiction of State government." The report stated that the area is now being wisely managed under a multiple-use concept with "adequate recreation facilities being provided."

Features of the bill (S. 1137) include the following:

Honeyman and Umpqua Lighthouse State Parks would be included, the boundaries following closely those proposed in the Duncan bill.

Estimated cost of acquiring private lands is set at \$1,392,000.

Estimated cost of headquarters and other facilities is \$6,274,000.

The Secretary of the Interior may conduct sand dune stabilization and erosion control programs as he deems necessary.

The boundaries include 15 private residential properties and 2 commercial enterprises. The boundaries in the bill as first introduced by Senator MAURINE NEUBERGER included 264 residences and 39 commercial enterprises.

In his report to the Senate committee, Acting Secretary of the Interior, John A. Carver, stated that the boundaries omitted 3 clusters of property on which 37 houses or

business structures are located. "It would be well," he declared, "if these properties could be obtained and authority has been granted by amendment to section 2 to permit the acquisition of such contiguous tracts by purchase, exchange, or donation where the owner desires to convey and Congress appropriates the necessary funds."

He did not indicate the location of the "clusters of property."

Because of objections by Senator MORSE, it is not expected that the Senate will vote on the bill until next session, if then. If the measure is approved by the Senate, it will then be necessary for the House of Representatives to take similar action. Congressman ROBERT B. DUNCAN has promised a hearing on the House dunes bill in Florence.

It is recommended by those opposing the park that Florence area citizens as well as other Oregonians write to both Senator MORSE and Congressman DUNCAN. The only address needed is Washington 25, D.C.

[From the Florence (Oreg.) Siuslaw News, Dec. 12, 1963]

FOR THE PEOPLE

If there had ever been any question about Senator WAYNE MORSE, our senior Senator, standing by his word, those questions had to be dispelled by his remarks this past week concerning the newest bill proposing a Sand Dunes National Park.

Over 4 years ago, Senator MORSE said he would oppose the inclusion of any "condemnation" feature included in any Dunes National Park legislation.

Last week, when the most recent bill was reported out of the Interior Committee it included condemnation provisions, which MORSE immediately spoke out against. Our senior Senator left no doubt in anybody's mind how he viewed this particular legislation and how strongly he felt his obligation to protect his constituents who would be affected by this legislation.

It is refreshing to know that there is one of our national legislators who feels he should consider the feelings of those directly involved and who elected him.

Too often, when an individual is elected to public office, they take it as carte blanche to do as they "see fit" without considering the feelings of the voters who elected them. It appears that upon election, representatives soar to a lofty perch and are above what the voters want—"I am not doing this for votes"—"I would do differently if this was to make the voters happy." I ask, what does an elected representative do? He is elected to do what the voters who elected him want him to do—not what he wants to do particularly.

Senator MORSE beyond all doubt understands his responsibility to the voters. This is emphasized by his remarks recently in the CONGRESSIONAL RECORD when he spoke on the subject of the Oregon Dunes. MORSE said: "As the senior Senator from Oregon, I serve notice tonight that I shall oppose the bill."

"I believe the Senate should think a long time before it proposes to subject a State to the establishment of a Federal park under such fact situations as exist in connection with the Oregon Dunes, and particularly when there is not a united delegation, and when the State government also has some interest in the matter."

Senator MORSE's remarks went on to say: "Mr. President, if we write into the bill the provision of condemnation, we in effect take great property value away from present owners of property. We pull the rug out from under some of the most important aspects of land ownership. We depreciate the value of that property to the tune of large sums of money."

"It is that kind of conduct on the part of the Federal Government, acting through the

Secretary of the Interior, Mr. Udall, that I resent. I shall do what I can, as the senior Senator from Oregon, to protect the private property interests of my constituents involved in this controversy."

The above stand on behalf of the voters, the so-called little people, is what encourages us in our belief that we all have rights under the Constitution of the United States, and that we have someone in the Congress of the United States that is going to represent us and fight for us.

[From the Florence (Oreg.) Siuslaw News, Dec. 12, 1963]

SENATOR MORSE RAPS DUNES BILL

Senator WAYNE MORSE, Democrat, of Oregon, has served notice he will oppose the Oregon Dunes National Seashore bill unless it is amended to forbid condemnation of private property, according to an article appearing in a daily paper.

MORSE submitted to the Senate last Tuesday night an amendment which would bar condemnation action either to acquire title or scenic easement on property within the 30,000-acre proposed park boundary except by consent of the property owner.

MORSE said he has urged the Senate Democratic leader, Senator MIKE MANSFIELD of Montana, to consider postponing Senate action on the bill "until more negotiating can be accomplished at both the Federal and State level."

[From the Florence (Oreg.) Siuslaw News, Dec. 12, 1963]

MORSE SAYS FUNDS ARRIVED

Senator WAYNE MORSE has notified the Siuslaw News that \$80,000 has been appropriated for dredging the local harbor.

The funds were approved by the Senate on December 9.

Senator MORSE's letter follows:

"Senate Appropriations Subcommittee has approved \$80,000 in dredging funds for Siuslaw Harbor for current fiscal year."

"Subcommittee has also approved \$9,000 for navigation investigation, Siuslaw River."

"In June I testified in support of these appropriations. Will urge their approval in Senate Appropriations Committee and Senate."

JESUS, THE PERFECT MAN

Mr. STENNIS. Mr. President, the late C. P. J. Mooney was longtime editor of the Memphis Commercial Appeal and wrote many excellent editorials which were both an inspiration and an enlightenment to his many readers throughout the mid-South. One of Mr. Mooney's editorials, "Jesus, the Perfect Man," has continued to enrich the spiritual and religious thought and life of the people for more than half a century. It has been reprinted in the Commercial Appeal each year prior to Christmas Day for the last 51 consecutive years, and, as I understand, will also appear this year. I hope the practice continues for many years to come.

This editorial was read and discussed by the leader of the Senate breakfast group at a recent meeting when many of those in attendance requested that the editorial be printed in the CONGRESSIONAL RECORD. Mr. Mooney's editorial is as true today as when written in 1912.

In order that the worth and spirit of this Christmas message may be shared throughout the Nation I ask unanimous consent that the editorial be included in the CONGRESSIONAL RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Commercial Appeal, Dec. 22, 1912]

JESUS, THE PERFECT MAN

There is no other character in history like that of Jesus.

As a preacher, as a doer of things, and as a philosopher, no man ever had the sweep and the vision of Jesus.

A human analysis of the human actions of Jesus brings to view a rule of life that is amazing in its perfect detail.

The system of ethics Jesus taught during His earthly sojourn 2,000 years ago was true then, has been true in every century since, and will be true forever.

Plato was a great thinker and learned in his age, but his teachings did not stand the test of time. In big things and in little things times and human experience have shown that he erred.

Marcus Aurelius touched the reflective mind of the world but he was as cold and austere as brown marble.

The doctrine of Confucius gave a great nation moral and mental dry rot.

Mohammed offered a system of ethics which was adopted by millions of people. Now their children live in deserts where once there were cities, along dry rivers where once there was moisture, and in the shadows of gray, barren hills where once there was greenness.

Thomas Aquinas was a profound philosopher, but parts of his system have been abandoned.

Francis of Assisi was Christlike in his saintliness, but in some things he was childish.

Thomas a Kempis' Imitation of Christ is a thing of rare beauty and sympathy, but it is, as its name indicates, only an imitation.

Sir Thomas More's Utopia is yet a dream that cannot be realized.

Lord Bacon writing on chemistry and medicine under the glasses of the man working in a 20th century laboratory is puerile.

Napoleon had the world at his feet for 4 years, and when he died the world was going on its way as if he had never lived.

Jesus taught little as to property because He knew there were things of more importance than property. He measured property and life, the body and soul, at their exact relative value. He taught much as to character, because character is of more importance than dollars.

Other men taught us to develop systems of government. Jesus taught so as to perfect the minds of men. Jesus looked to the soul, while other men dwelled on material things.

After the experience of 2,000 years no man can find a flaw in the governmental system as outlined by Jesus.

Czar and Kaiser, president and Socialist, give to its complete merit their admiration.

No man today, no matter whether he follows the doctrine of Mills, Marx, or George as to property, can find a false principle in Jesus' theory of property.

In the duty of a man to his fellow, no sociologist has ever approximated the perfection of the doctrine laid down by Jesus in His sermon on the mount.

Not all the investigation of chemists, not all the discoveries of explorers, not all the experience of rulers, not all the historical facts that go to make up the sum of human knowledge on this day in 1912 are in contradiction to one word uttered or one principle laid down by Jesus.

The human experiences of 2,000 years show that Jesus never made a mistake. Jesus never uttered a doctrine that was true at that time and then became obsolete.

Jesus spoke the truth; He lived the truth, and truth is eternal.

History has no record of any other man leading a perfect life or doing everything in logical order. Jesus is the only person whose every action and whose every utterance strike a true note in the heart and mind of every man born of woman. He never said a foolish thing, never did a foolish act, and never dissembled.

No poet, no dreamer, no philosopher loved humanity with the love that Jesus bore toward all men.

Who, then, was Jesus?

He could not have been merely a man, for there never was a man who had two consecutive thoughts absolute in truthful perfection.

Jesus must have been what Christendom proclaims Him to be—a divine being—or He could not have been what He was. No mind but an infinite mind could have left behind those things which Jesus gave to the world as a heritage.

INCREASING IMPORTS OF CATTLE PRODUCTS

Mr. STENNIS. Mr. President, during the past 6 years imports into the United States of various cattle products, particularly beef and veal, have experienced a large increase. In 1957, for example, these imports amounted to 3.9 percent of domestic production; in 1962, this figure increased to 11 percent; and imports of these items during the first 8 months of 1963 were approximately 22 percent above the level of the first 8 months of last year. Within this overall category, imports of manufacturing meats are now equal to approximately 40 percent of domestic production.

Although the Department of Agriculture has consistently treated these facts lightly, the spokesmen for the cattle industry insist, and have proven, that this increase of imports is a significant contributing factor to the continually declining prices which have been experienced in our market during the past few years. Although our prices should be stable and our market strong because of our steadily increasing consumption of beef and veal, which now equals about one-third of the total world supply, exactly the opposite situation prevails. It seems very clear to me that the high level of these imports is certainly an important factor in these market conditions.

The Trade Information Committee and the U.S. Tariff Commission are currently conducting hearings with reference to the forthcoming international tariff negotiations to be held in Geneva. Beef and veal are among the items on which existing duties will be subject to possible reduction during the negotiations, and testimony on these items has already been presented to the Trade Information Committee and the Tariff Commission.

In addition, the Senate Committee on Finance has directed the Tariff Commission to investigate the various factors affecting competition between domestic and imported beef and beef products. Under the terms of the resolution directing this study, the Tariff Commission is to report its findings by June 30, 1964. In the light of the evidence which is readily available, however, it is clear that steps must be taken immediately to se-

cure some measure of relief to our domestic industry.

In the face of these facts, our trade representatives will go to the forthcoming negotiations armed with authority to reduce the present tariffs on these meat products by 50 percent, or even to zero. I strongly suggest that we should maintain the existing duties on these imports; and I have, accordingly, requested the President to instruct our representatives to these negotiations not to grant any concessions on these items.

We cannot solve this problem, however, by simply maintaining our import duties at the current rate. Because of the rising production costs incurred by our domestic producers and the general price level in the United States, together with lower production costs and various governmental incentives in foreign producing nations, a 3-cent per pound tariff on beef and veal does not constitute sufficient protection. The existing duty has been in effect since 1947, and it cannot be disputed that the level of these imports has increased significantly since that date.

What is needed, Mr. President, is the imposition of some type of restrictive barrier to prevent these imports from continually increasing. By this, I do not mean that we should stop all imports of these products; but we do need to establish a reasonable import quota.

Discretionary authority is now vested in the President to immediately initiate action which would be of significant value to the cattle industry. This authority is found in section 204 of the Agricultural Act of 1956 which provides:

The President is authorized to negotiate agreements with foreign governments in an effort to limit the export to the United States of agricultural commodities or products.

Pending the report of the Tariff Commission, as ordered by the Senate Finance Committee, I have requested President Johnson to initiate consultations with the major cattle producing nations, in an effort to reach a type of moratorium agreement limiting any further increase in the level of these imports. Upon a final determination of the impact of these imports on the domestic market, long-range agreements should be negotiated to establish an import quota for each foreign producing nation. These agreements should grant to these nations a reasonable, but limited, access to our market, but simultaneously guarantee to our domestic producers their rightful share of the continually increasing demand for these products in the United States. In my opinion, the consummation of such agreements would constitute the most effective and appropriate action available to us, consistent with the intent and purposes of the Trade Expansion Act.

The cattle business is one of the last in this Nation, Mr. President, to be largely free from Government subsidy, control, and regulation. This situation will not long prevail, however, unless steps are taken immediately to protect the industry from the competitive advantage of certain foreign producers. It is time now to take a realistic look at

our trade policy in this respect; and I am hopeful that the President will move in this direction without delay.

MRS. ALINA F. BRIDGES

Mr. COTTON. Mr. President, I know that every Member of the Senate who served with my late beloved senior colleague from New Hampshire, Styles Bridges, will have a deep interest and find poignant significance in the death of his mother, Mrs. Alina F. Bridges, who passed away on December 14 at Lake Worth, Fla., at the age of 88.

Most men of character and of achievement in this life owe much to their mothers, but the case of Mrs. Bridges surpasses most. Left a widow at an early age with three small children, she raised them magnificently with no resources but her earnings as an elementary school teacher. We who knew Styles Bridges do have some perception of how she inspired greatness in all her children.

A remarkable news report in the Boston Herald of December 15, 1963, traces her life and the careers of her children eloquently and succinctly and far better than I could recount them. I ask unanimous consent that it appear at this point in the body of the RECORD.

There being no objection the article was ordered to be printed in the RECORD, as follows:

MRS. BRIDGES IN FLORIDA, 88—MOTHER OF SENATOR, BURIAL RITES IN MAINE

Mrs. Alina F. Bridges, 88, a former resident of Milton and mother of the late U.S. Senator H. Styles Bridges, Republican, of New Hampshire, died yesterday at home in Lake Worth, Fla., after a quiet life personified by self-sacrifice.

Born in West Pembroke, Maine, and a graduate of its high school, she taught elementary school in that area for 30 years not only because she placed an irreplaceable value on education but also because her husband died shortly after they were married and she had three young children to raise.

ALL TAUGHT SCHOOL

That she succeeded was obvious. Styles went on to the U.S. Senate after rising to the governorship of New Hampshire. Another son, the late Ronald P., earned an M.A. degree from Harvard, after attending Bates and Bowdoin Colleges, and was president of the Pacific School of Religion in Berkeley, Calif.

A daughter, Miss Doris, with whom she resided both on Pine Grove Street in Milton and later in Lake Worth, was graduated from Boston University and Columbia and retired 2 years ago as head of the English department at Milton High School.

Ironically, all her children launched their own careers teaching in the same little schoolhouse in the Young's Cove school district of Maine where she first taught.

For the past 25 years, although she still maintained the Bridges' family home in West Pembroke where she summered, she lived mostly in Milton where she was a member of the East Congregational Church and a member of the church's women's society.

In 1954 the soft-spoken, silver-haired Mrs. Bridges was named "Maine Mother of the Year," and in 1947 she was named "Maine State Mother."

The latter award, conferred upon her by the American Mothers Committee of the Golden Rule Foundation in New York City, was received by her with a warm smile and a gentle thrust of her Yankee wit.

"Don't believe for a minute that they're not honoring my two sons and my daughter, too," she said. "Why, where would I be without them? I wouldn't even be a mother."

Both Ronald and Styles also went on to be listed in "Who's Who" and on one public occasion after another they paid tribute to their mother.

When Styles became Governor of New Hampshire, his first official act was to jot a note of gratitude to her. It said: "The first stroke of a pen made by the new Governor goes to you, mother."

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. COTTON. I yield.

Mr. MANSFIELD. I join the distinguished senior Senator from New Hampshire in the remarks he has made about our late beloved colleague, Styles Bridges, and his mother. We, too, extend our sympathy to this magnificent family.

Mr. COTTON. I thank the Senator.

CLEVELAND PROTESTS SOVIET ANTI-SEMITISM

Mr. LAUSCHE. Mr. President, Cleveland leaders of all faiths and political persuasions have joined together to protest the increasing manifestations of anti-Semitism within the Soviet Union. This group, the Cleveland Committee on Anti-Semitism, has as its cochairmen Msgr. Lawrence P. Cahill, president, St. John College; Rabbi Philip Horowitz, Brith Emeth Congregation; Hon. Leo A. Jackson, Cleveland City Council; and Rev. B. Bruce Whittemore, Cleveland Area Church Federation. I have previously spoken on this subject, but in view of recent developments, more should be said.

Mr. President, late last month, the members of the Soviet cultural delegation visiting this country were in Cleveland as part of their national tour. The Cleveland Committee on Soviet Anti-Semitism sought to interview the Soviet visitors with respect to anti-Semitism within the U.S.S.R. but the Russians steadfastly avoided the confrontation. While on the one hand they issued public denials of Jewish persecution in the Soviet, on the other hand they adroitly sidestepped the opportunity of being faced with the evidence on anti-Semitism in their homeland in the possession of the committee.

On November 27, the Cleveland committee inserted in the Cleveland Plain Dealer an appeal to the conscience of Soviet leaders to halt the oppression of Russian Jews. This appeal cited the facts to which the Soviet delegation had turned a deaf ear. I append that appeal hereto as a part of my remarks. The facts speak for themselves. I join with the concerned citizens of Cleveland in voicing my own deep concern in the prayerful hope that the Soviet leaders will recognize that they offend the conscience of the world by their actions and will revise their policy accordingly.

Mr. President, I ask unanimous consent that the text of an advertisement appearing in the Cleveland Plain Dealer Wednesday, November 27, 1963, be

printed in the RECORD as a part of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

OCTAHOBNTCEB (HALT!)

(An appeal to the conscience of Soviet leaders to halt oppression of Russian Jews.)

SEVEN-POINT APPEAL PREPARED BY CONFERENCE ON THE STATUS OF SOVIET JEWS, NEW YORK, OCTOBER 12, 1963

1. Eliminate the anti-Jewish character of the official campaign against economic crimes (in which an attempt has been made to blame the Jews for the economic and moral breakdown in Soviet internal affairs. The death penalty has been meted out to hundreds of persons, most of whom have been identified as Jews in the Soviet press).

2. Permit Jewish emigration to reunite separated families.

3. Permit cultural and religious ties between Soviet Jews and Jews of other lands.

4. Reopen closed synagogues and lift the ban against the performance of religious Jewish observance.

5. Reopen Jewish schools.

6. Revive Jewish institutions in Yiddish and Hebrew.

7. Launch a vigorous educational campaign against anti-Semitism, directly attack endemic anti-Jewish feelings and cease campaigns of vilification in the press and other mass media.

SUPPORTING THIS APPEAL ARE MANY AMERICANS WHO DEPLORE PERSECUTION WHEREVER IT EXISTS

Nationally: Justice William O. Douglas, Rev. Dr. Martin Luther King, Jr., Senator Herbert H. Lehman, Bishop James A. Pike, Mr. Walter Reuther, Mr. Norman Thomas, Mr. Robert Penn Warren, and Dr. Moshe Decter.

In Cleveland: Prof. George W. Albee, Rev. Amos A. Ackerman, Ralph M. Besse, Rev. Edward Bergstraesser, Rev. Joel Blatt, Rev. Charles H. Bright, Dr. John Bruere, Rev. H. Richard Bucey, Rev. Samuel H. Cassel, Mayor Paul W. Cassidy, Dr. Kenneth Clement, Rev. Stephen Csutoros, Rev. Duane L. Day, Rev. M. Richard Drake, pastor, Dr. Bernard H. Eckstein, Rabbi Louis Engelberg, Dr. Gerald Tauber, Msgr. Daniel T. Gallagher, Mr. Victor Gelb, Dr. David Gitlin, Bishop Joseph Gomez, Rev. Ralph M. Gray, Rabbi Jack Herman, Mr. Clarence Holmes, Judge Perry B. Jackson, Dr. Emerson Jacob, Mr. Russell W. Jelliffe, Mr. Stanley B. Kent, Rev. Albert Kokolowsky, Rabbi Louis H. Lieberworth, Rev. W. Chave McCracken, Rt. Rev. Msgr. Anthony V. Mechler, Rev. Henry L. Noffke, Dr. Paul Olynky, Rev. A. M. Pennybacker, Rabbi I. Pickholtz, Rev. V. A. Peterson, Rev. Isaiah P. Pogue, Jr., and Chief Justice August Pyratel.

Dr. Louis Rosenblum, Rabbi Milton Rube, Rabbi Benjamin Rudavsky, Dr. Abe Silverstein, Mr. Ralph Rudd, Mr. William E. Sanborn, Rev. Peter H. Samson, Dr. Oliver Schroeder, Jr., Rabbi Jacob Shtull, Rabbi Myron Silverman, Judge Samuel Silbert, Mr. John B. Blade, Mr. James H. Sivard, Rabbi Marvin Spiegelman, Dr. Benjamin Spock, Mr. Robert Stafford, Dr. Thomas G. Stampf, Dr. Harry B. Taylor, Mr. George J. Urban, Hon. Carl V. Weygandt, Judge Theodore M. Williams, Prof. Harvey Wish, Rev. Howard B. Withers, Msgr. Louis A. Wolf, Very Rev. Hugh E. Dunn, S.J., Mr. Jay D. Feder, Rev. Irving Levine, A.J.C., Mr. Ben Zevin, Rabbi Daniel Litt, Prof. Michael S. Pap, and hundreds of others.

Sixty U.S. Senators have issued their own appeal to the U.S.S.R. in Senate Resolution 204. Lord Bertrand Russell this year sent a personal appeal to Premier Khrushchev calling for an end to Soviet anti-Jewish practices.

Cleveland Committee on Soviet Anti-Semitism—Cochairmen: Msgr. Lawrence P. Cahill, President, St. John College; Rabbi Philip Horowitz, Brith Emeth Congregation; Hon. Leo A. Jackson, Cleveland City Council; Rev. B. Bruce Whittemore, Cleveland Area Church Federation.

ROSS COUNTY DISTRICT LIBRARY, CHILLICOTHE, OHIO, RECIPIENT OF DOROTHY CANFIELD FISHER MEMORIAL AWARD

Mr. LAUSCHE. Mr. President, this year the Ross County District Library, Chillicothe, Ohio, has been selected to be the recipient of one of the Dorothy Canfield Fisher Memorial Awards of \$1,000 which is presented by the Book of the Month Club.

Previous winners in Ohio include the Preble County Library, Holmes County Library, and the Public Library of Iron-ton.

I should like to take this opportunity to commend the Book of the Month Club for providing this award, and to express my congratulations to the small libraries who have been the recipients, in particular the Ross County District Library.

I wish the libraries continued success in their efforts to provide more and better library services for the citizens of their communities.

OUR SPIRITUAL HERITAGE

Mr. TOWER. Mr. President, the Kiwanis International Council, meeting in Chicago in October, passed a nonpartisan and nondenominational resolution on a matter of real concern to all Americans.

This succinct and penetrating resolution speaks to the topic of those who would have us interpret freedom of religion as freedom from religion and separation of state and church as separation of state and God.

I commend to my colleagues' close attention this Kiwanis Council resolution.

I ask unanimous consent that the resolution may be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

OUR SPIRITUAL HERITAGE

(Resolution presented to the International Council, Chicago, Ill., October 23, 1963)

The United States of America is a nation founded upon belief in God and maturing under a trust in God. In return for that trust, He has blessed us beyond all other nations and protected us from our national follies and errors.

From Him we have derived certain inalienable rights, among which are personal and religious freedom. We in turn have shared those with all who have come to the golden door seeking personal, religious, or political freedom. We have guaranteed religious freedom by providing that there shall be a separation of church and state while at all times being committed to belief in God and His will.

Whereas there are those who would have us interpret freedom of religion as freedom from religion, separation of state and church as separation of state and God; and

Whereas certain individuals and groups seeking to deny the dependence of this Nation and its people on God have embarked on such campaigns as to effect removal of

"Under God" from the Pledge of Allegiance and "In God We Trust" from our coinage: Therefore be it

Resolved, That the President and the Congress of the United States be solemnly requested to reaffirm recognition of the spiritual heritage of this Nation and its people and to oppose and prevent further attempts however well intentioned which tend to deny our national and personal trust in God or to remove God from the corporate body of our Government.

REDUCTION OF MILITARY SPENDING

Mr. ANDERSON. Mr. President, I support President Johnson's efforts to reduce military spending wherever possible without doing injury to national security. His objective is dictated by sound logic and efficient management of the public's business.

At the same time, I am well aware that military and defense plants often are the economic foundation of many communities. When these establishments are curtailed or when contracts are ended, the result can be disruptive to these communities. Many communities have had military installations and defense plants for so long that they have come to regard them as permanent. But we all know that times change and defense requirements change too. In view of the recent announcement of the closing of a number of facilities and with the likelihood that other installations will be shut down, new attention is being focused on what can be done by the affected communities and by the Government to ease the blow and to seize the advantage for new economic opportunities. This is why I am especially pleased with the efforts Roswell, N. Mex., is making to look ahead and build a backstop against any eventuality at nearby Walker Air Force Base. Walker, a Strategic Air Command base, contributes about one-third of Roswell's annual \$200 million income. So it is understandable why the people of that fine community should be thinking about alternative sources of income.

There are no plans that I know of to close Walker Air Force Base. Nevertheless, the Roswell Chamber of Commerce has been doing some long-range thinking and now is doing some future planning to attract new industry and to improve the agricultural economy of the area. I think the future will find Roswell well prepared, and other communities might look to Roswell as an example of what can be done to prepare for possible changes in the defense picture.

A fine article in today's Wall Street Journal describes the effort at Roswell, and I ask unanimous consent that it be inserted in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DEFENSE BASE CLOSINGS SPUR ROSWELL, N. MEX., TO DIVERSIFY ECONOMY—THOUGH AIR FACILITY FACES NO IMMEDIATE THREAT, CITY GETS U.S. HELP IN SHAPING PLANS
(By William Beecher)

ROSWELL, N. MEX.—This dynamic little city of 45,000 in the heart of the Pecos Valley is enjoying the bounty of prosperity but acting as if the wolf were at the door.

Roswell's biggest single industry is national defense, specifically income generated by Walker Air Force Base, a sizable Strategic Air Command bomber and missile base here. The SAC base contributes about one-third of Roswell's annual \$200 million income.

In this dependence on defense, Roswell is more or less typical of hundreds of U.S. communities. Right now a number of towns and cities, from Schenectady to San Diego, are complaining about the damage to their economies feared from the cutbacks and closings of military bases announced last week by Defense Secretary McNamara.

But unlike most defense-dependent communities, Roswell is actively preparing for the day when defense dollars spent here may dry up. Even though Pentagon planners have assured the city that the base should hum along at full tilt for at least 5 years and probably much longer, Roswell's business and civic leaders have launched a determined effort to diversify the city's economy now. They've hired city planning consultants to propose a modernization plan for their business district and they've taken on other outside specialists to draft proposals for attracting new industry.

OFFICE OF ECONOMIC ADJUSTMENT

The city's first move was to Washington, to a little-known corner of the Defense Department quartering the Office of Economic Adjustment. This Office was set up in the first days of the Kennedy administration to help cushion the blow in places where heavy spending military installations had to be closed or big defense orders curtailed. Though its staff numbers only five persons, it can call on specialists throughout Government for aid. Among other communities, Presque Isle, Maine, was assisted in luring new industry when a missile base there was closed. Wichita, Kans., got help in seeking new Government business when B-52 bomber production there was shut down.

A delegation from Roswell trekked to Washington last May and asked for Government suggestions. "We went to Washington not for a subsidy or a handout," insists A. J. Armstrong, 49-year-old manager of a meat-packing plant and a member of the Roswell Chamber of Commerce. "We weren't looking for money; we were looking for ideas and help in shaping plans for a more broadly based economy."

Recalls Donald Bradford, director of the Pentagon's Economic Adjustment Office: "Till then our efforts had pretty much been confined to assisting communities already in trouble. The idea of anticipating this problem and doing something well before it became critical attracted us. We thought we might make a model of Roswell, showing what could be done with a little advance planning and local self-help."

The heavy economic impact of shifts in defense spending is hardly new; after both World War II and the Korean War, defense procurement sank sharply, if temporarily. But officials see added need to cushion the blows during a period when fast-advancing technology causes military buyers to flit from one new weapons system to an even newer one, and when total defense spending is expected to decline by as much as \$5 billion a year by 1968.

NEW COORDINATING GROUP

To coordinate Government aid to companies and regions likely to be affected, Secretary McNamara recently named his special assistant, Adam Yarmolinsky, to chair a new high-level working group. It will coordinate efforts within the Defense Department and among other interested agencies such as the Arms Control and Disarmament Administration.

Too, the Pentagon plans to develop an early warning system for alerting defense industries and regions of the country about impending economic dislocations. A long-

range program is just getting under way to identify the prime contractors and subcontractors who share in the combined \$57-billion annual expenditures of the Defense Department, the Atomic Energy Commission, and the National Aeronautics and Space Administration; to determine the areas most directly affected by defense business; and to project defense spending in each industry 5 years ahead.

Already the Census Bureau has agreed to conduct a special survey of manufacturers to determine precisely where defense work is done, the value of such work by company, and the share of each company's work force devoted to defense activity. And a major economic-impact study contract to cost \$750,000 in the next 2 years has just been awarded to the Institute for Defense Analysis, a private research outfit.

Defense Department Comptroller Charles Hitch, while optimistic about developing tools with which to predict economic problems arising from cutbacks, cautions that "it will take several years before we can hope to obtain reliable data," particularly on possible defense shifts from one location to another. In that sizable segment of defense business awarded competitively rather than negotiated, "there is no feasible way to forecast which firm will receive a particular contract," he notes. "But we do hope, eventually, to be able to make some rough projections by regions."

Once an industry or region has been alerted, there is little the Government can do beyond explaining what aid is available through normal channels and encouraging self-help. When a Federal installation closes, the Government does give first crack at new jobs in the area to displaced workers. But in the case of a contract termination, it may not legally shunt fat new contracts to the community merely to soften the blow.

In Roswell's case, the Economic Adjustment Office organized a task force of 15 specialists from the Departments of Defense, Labor, Interior, and Agriculture. Along with counterparts from New Mexico State and county agencies, they took part in a day-long "brain-storming" session in Roswell on September 27. Most of the key business, labor and farm leaders of this area attended; so many wanted to be present that the meeting had to be shifted from a downtown motel to the nearby airbase.

As an aftermath of the meeting, community leaders took a look at the downtown business district which has not been drawing in many people from rural areas and has been losing business to numerous little shopping centers on the fringes of town. The main business strip sprawls along 3½ miles of main street, a rather spotty area plagued by lack of one-stop shopping opportunities and a shortage of parking space. They decided to hire Harland Bartholomew and Associates, a St. Louis-based city planning firm, to propose a modernization plan; the chamber of commerce agreed to pick up the \$25,000 tab.

The local leaders examined their industrial picture. The Glover Packing Co., with only a little over 200 employees, is the largest commercial enterprise; other plants making such things as prefabricated houses, cinder blocks, and neon signs are all quite small. It was decided that another outside specialist would be hired to make proposals for attracting new industry; the city agreed to pay for a \$16,000 study by Fantus Area Research, Inc., of New York.

Roswell also reviewed local agriculture, dominated by cotton, cattle, and sheep raising. If some of the land now committed to cotton could be converted to sugarbeets, perhaps a \$20 million sugar refinery could be attracted. Some thought already had been given this possibility and more than 400 farmers had pledged to devote 32,000 acres to sugarbeets; the community decided to

push to obtain the necessary acreage allocation from the U.S. Agriculture Department.

Attention was given to possible establishment of a petrochemical industry in Roswell. A special study group was formed including a petrochemical engineer with Humble Oil & Refining Co., and a geologist with Atlantic Refining Co.

Some possibilities broached at the September seminar seemed far out. One suggestion that synthetic alcohol produced from petroleum might be used in setting up a liquor industry was greeted by laughter; but, after some checking, it was learned that such alcohol can indeed serve to speed the fermentation of grain.

Says Bill Deane, 48, a retail merchant and chairman of the meeting: "One idea hitchhiked on another; we got a pretty fair notion of where we are and where we ought to be going." Adds Bill Armstrong, 43-year-old roadbuilder and chamber of commerce president: "The Government people didn't hand us anything, but by their presence they convinced the community we were serious about improving our condition. They gave us the necessary impetus to really get moving."

In Washington, Mr. Bradford expresses genuine pleasure at the strides being made in Roswell. "It establishes a pattern that other communities might well follow," he says. "Already two Congressmen who heard about Roswell have come to us suggesting similar programs in a couple of cities, one in the Northeast, another in the Midwest. Until we can develop some kind of workable early warning system, this represents the best interim approach."

PROJECT NEPTUNE

Mr. JAVITS. Mr. President, the late President Kennedy had a keen appreciation of the importance of scientific research, and one of the fields in which he felt we needed much more knowledge was the ocean. Oceanographic studies form a relatively new area of comprehensive research and many nations are engaged in it. There is much more that we can do in this search for information; and in a letter to the Honorable Clare Boothe Luce, President Kennedy had reviewed the Federal Government's role up to the present as well as his plans for the future. This is an extremely important statement, and we should be grateful to our former colleague, Ambassador Luce, for making it public together with the letter she wrote which elicited President Kennedy's reply.

I ask unanimous consent to have printed in the RECORD the address by the Honorable Clare Boothe Luce entitled "The New Frontier of the Ocean," containing these letters, which she delivered at the annual dinner of the Stritch School of Medicine, Loyola University, November 26, 1963.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

THE NEW FRONTIER OF THE OCEAN

(Address by the Honorable Clare Boothe Luce, at the annual award dinner, the Stritch School of Medicine, Loyola University, Chicago, Ill.)

Last spring, when your committee extended the flattering invitation to address the annual Cardinal Stritch Award dinner of the Loyola Medical School, though pride tempted me to accept with alacrity, prudence counseled otherwise. First, this annual dinner has increasingly come to be known as one of the most distinguished and important

charity events in America, attended by an audience of considerable intellectual distinction and wide knowledgeability. And I was somewhat painfully aware of my limitations as a speaker on so significant an occasion. Second, I realized that this was to be a strictly nonpolitical event, and that my subject must be one quite free of any partisan overtones. As you well know, ladies and gentlemen, it is easier for a camel to pass through the eye of a needle than for a speaker of known political convictions to avoid political imputations, if not implications, in a presidential campaign year.

But in the end I accepted your wonderful invitation, because happily I thought I had found in "The New Frontier of the Ocean" a politically nonpartisan subject. It was my intention to tell you tonight that we are entering the new ocean age; that our Nation's destiny will be linked ever more closely with the success of our national oceanographic efforts and research plans.

And because of the special interest of this audience, a good part of that talk was to have been concerned with the many extraordinary advances being made in marine biology and underwater medical research.

That talk you will not hear tonight.

You see, last Friday, at 1 o'clock, I was sitting writing on a jet plane, en route from Arizona to New York. I was struggling with my briny topic, trying to give it a few light, salty touches when the pilot's voice, urgent and somber, abruptly filled the plane with the terrible news that our President had been assassinated. I wrote no more on the talk that day. The pages that lay on my lap were suddenly dampened with real salt water—the salt of one American's tears. My mind and heart, like yours, have since been full of horror and grief.

Tonight you will hear not just my words on the importance of an oceanography program to our Nation's destiny. You will hear President Kennedy's words—words which have never been heard before. The correspondence I shall read to you, between the President of the United States and myself, a private citizen, no longer belongs to me. It belongs to you the people, and to the Nation's archives.

I would prefer not to read my own letter, but I must because it initiated the exchange, and it is essential to your understanding of the President's response.

On August 2 last, I wrote President Kennedy the following letter:

"DEAR MR. PRESIDENT: On the 4th of July last, in Philadelphia, I had the honor to keynote the fourth annual convention of the Underwater Society of America. The invitation to address this gathering of distinguished underwater oceanographers, archaeologists, photographers, engineers, biologists, ichthyologists, and submarine researchers, fell to me no doubt consequent to the regrettable fact that the convention could think of no other available public figure who was deeply interested in the overall question of inner space exploration.

"In that address, I expressed the fervent hope that our Government would, before too many years passed, undertake a Project Neptune, dedicated to the total underwater proposition that man can and will explore, research, hunt, farm, mine, colonize, and tour earth's inner space for the increasing enrichment of mankind. I was not aware when I spoke, Mr. President, that you had for some time been considering a beginning to just such a vast undertaking.

"Surely your proposed \$2,300 million plan to explore the sea, announced this week, will rank as one of the greatest achievements of your administration. I even venture to predict that 10 years from now, if your Project Neptune goes energetically forward under a coordinating Oceanographic Agency of the Government, it will be recognized throughout the world as the single most exciting

and profitable scientific undertaking of your administration.

"Certainly there is no nation so geographically, scientifically, economically favored as we are for this challenging and richly rewarding undertaking. In a great hydro-space thrust we can, in a matter of a few years, outdistance all the oceanographers of the U.S.S.R. and other nations, whose original contributions to underwater exploration have, unhappily, so far been greater than our own.

"The very fact that our only deepsea craft, the 10-year-old, secondhand Trieste, was the private invention of a poor and humble Swiss professor of physics, August Picard, has so far seemed the measure of our own lag in abyssal exploration. The many pronged hydro-space thrust your program envisages will swiftly change our underwater posture, and it calls for loud cheers from the entire Nation.

"Unhappily, Mr. President, for certain psychological and superstitious reasons (which I touched on in my convention address), the tremendous significance and importance of your inner space project has not been grasped by the American public, or the press. For example, the announcement of it appeared in the New York Times on page 9, and it probably received even less attention from the rest of the country's press.

"May I respectfully suggest that no one but yourself can assure Project Neptune the headline attention it deserves. I hope you will consider sending a special message to Congress about it.

"Few Americans seem aware of the tremendous advances that have been made, or of the even greater ones still to be made in the whole field of oceanography. Only you can focus the Nation's attention on the many challenges of the inner space proposition: The farming and mining of our undersea resources; the possibilities of mineral, archeological and meteorological discoveries; the possibility of fresh water recovery; and the finding of a new range of antibiotics for human use. Only you can bring together for all to reflect upon, the many sciences—geology, physics, biology, mathematics—which are being today applied to inner space exploration. Only you can paint the comprehensive picture of the military, commercial, and scientific purposes your program will serve.

"I feel sure that such a message will become a document of historic significance whose luster can never be dimmed by any political event or consideration. No President, perhaps, in all American history has proposed a national undertaking more challenging and more potentially fruitful for our country and for mankind than Project Neptune.

"With renewed expression of admiration,
Respectfully,

— — — — —

On August 23, just 3 months ago, the President responded:

"DEAR CLARE: Your inspiring talk on the exploration of inner space certainly strikes a responsive note. I share your conviction that exploration of the seas and the life it nurtures can be one of the most challenging and rewarding activities of this decade. It is impossible to exaggerate the importance that the ocean resources and an understanding of the effects of the physical phenomena associated with the seas holds for our future.

"As you note, we have made a determined effort with considerable success in my administration to stimulate research in oceanography. We have set our sights to comprehend the world ocean, its boundaries, its properties, its life, and its processes, motivated by the very same prospects that you describe.

"In 1961, when we made our first review of the Nation's research activities in oceanog-

raphy, we noted two serious shortages—trained scientists capable of specialized work in oceanography and research facilities. Research ships, computers, adequate instruments, and laboratory buildings were badly needed. Existing facilities were sparse and mostly obsolete. Furthermore, the lack of facilities made it impossible to increase substantially the number of students who were studying at any one time. Impressed by these facts, we have concentrated our resources during these first years on efforts to improve the facilities for research and to increase as rapidly as possible the number of oceanographers being educated. We are replacing obsolete ships, modernizing laboratories and providing additional support for research programs.

"In 1960, the Federal Government's expenditures for oceanography amounted to only \$39 million. My budget submitted to the Congress for 1964 requests \$156 million for oceanographic research and facilities.

"I am enclosing two reports prepared by the Interagency Committee on Oceanography, the Government group responsible for planning our activities in this field. One describes our plans for 1964 and the other outlines the 10-year program for oceanography which prompted the news report that you saw. Incidentally and perhaps inevitably these reports lack the sparkle and enthusiasm that punctuates your paper. As you will see, the program is already substantial and the 10-year plan calls for continued growth which should give the United States the preeminent position you desire.

"You call attention to the modest scale of our effort in deep diving vehicles. This may indeed be an area that should be enhanced. Our disheartening effort to locate the lost submarine, *Thresher*, shows how inadequate is our ability to explore the very great depths. Stimulated by the *Thresher* tragedy the Navy is currently developing a research program whose purpose will be to achieve a major improvement in our ability to work in the deep sea.

"I share also your concern over the fact that the tremendous challenge and importance of these activities is not generally appreciated. This stems in large part, I believe, from the fact that the research necessarily consists of a very large number of interrelated activities of which no single one fires the imagination. I am considering adopting your descriptive phrase, "Project Neptune," which would serve to focus attention on the scope and significance of these activities. Possibly too, I will have the opportunity to incorporate a message on oceanography into one of the talks I plan to make before scientific groups during the fall.

"Thank you very much for your encouraging letter and please let me have any further thoughts that may occur to you on the problem of creating a public awareness of these research opportunities.

"Sincerely

"JOHN KENNEDY."

Ladies and gentlemen, President Kennedy did not live to find the hoped for occasion to draw America's attention to Project Neptune. I think he would be happy tonight to know that the Cardinal Stritch Medical School has given his brilliant ideas this posthumous platform of your hearts and minds.

I must add one further footnote to the history of President Kennedy's profound interest in his oceanographic program. On September 26, 1963, with the President's approval, a team of six Government oceanographers, including Dr. James H. Wakelin, Assistant Secretary of the Navy for Research and Development, and Dr. Edward Wenk, Jr., assistant to the President's science adviser, Dr. Jerome Wiesner, came to New York to dine with my husband and me, and a group of writers and editors. Until midnight they expounded the President's deep desire for America's writers and America's press to pub-

licize and bring about a better understanding of Project Neptune.

Yes, our President has put out upon the mightiest ocean of all, the one we, too, shall all explore in time—the ocean of eternity—bounded by the unknown and unknowable height and breadth and depth of God. But the oceans John Kennedy has left behind, he has bid us to explore, to exploit, to conquer for the security of America and for the benefit of all mankind.

RALPH R. BORMAN

Mr. BURDICK. Mr. President, Mr. Ralph R. Borman, one of our Fargo citizens was singularly honored this past week for his outstanding contribution to North Dakota and the U.S. Army. For the past 4 years he has rendered extraordinary service to the Secretary of the Army as civilian aid. In recognition of his contributions, he received the Outstanding Civilian Service Medal by the Department of the Army, and the city of Fargo, N. Dak., adopted a resolution commending Mr. Borman for his role in furtherance of our national defense and more particularly the promotion and strengthening of the Army.

Mr. President, I ask unanimous consent to have the citation and the resolution printed at this point in the RECORD.

There being no objection, the citation and resolution were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE ARMY: RALPH R. BORMAN IS AWARDED THE OUTSTANDING CIVILIAN SERVICE MEDAL

Citation: For outstanding service as civilian aid to the Secretary of the Army for the State of North Dakota during the period August 17, 1959, to August 17, 1963. His guidance, support, and participation in an organized program to welcome home returning Reservists called up during the Berlin crisis and smooth their return to civilian pursuits were instrumental in the success of this program in his State. He consistently supported Army manpower programs to include the Army's position on ROTC. He personally made public speeches on the Army's behalf, participated in seminars, and secured Army speakers for influential audiences. His conspicuous service over a 4-year period has been of great value to the Department of the Army.

CYRUS VANCE,
Secretary of the Army.

Whereas the Honorable Ralph Borman has served as civilian aide to the Secretary of the Army for the State of North Dakota for many years last past and in this capacity Mr. Borman has worked closely with the Armed Forces and the city of Fargo in furtherance of our national defense and more particularly the promotion and strengthening of our Army; and

Whereas the Honorable Ralph Borman has been instrumental in the development of the U.S. Army's program in this area and particularly in the city of Fargo as is attested to by the successful recruiting campaigns and by the development of a number of military buildings, more particularly the U.S. Army Recruiting Center and the U.S. Army Reserve Training Center and other installations and their successful undertaking and completion were in large a result of the leadership, perseverance and hard work of the Honorable Ralph Borman; and

Whereas the Honorable Ralph Borman has participated actively in the community and city life of the city of Fargo and has at all times been helpful in the advancement of

worthwhile civic programs which have been beneficial to the citizens of the city of Fargo and has given generously of his time, energy, and talents in the promotion of the development of the city of Fargo and at all times has been a good, conscientious and friendly neighbor and good citizens whose services are deeply appreciated by his city government and his friends and neighbors in Fargo: Now, therefore, be it

Resolved, That the city commission of the city of Fargo on behalf of the citizens of Fargo does hereby express its deep and heartfelt appreciation to the Honorable Ralph Borman for his dedicated years of public service and to the city of Fargo as citizen, civic leader and as civilian aid to the Secretary of the Army: and be it further

Resolved, That this expression of gratitude and appreciation to the Honorable Ralph Borman be spread upon the permanent minutes of the Fargo City Commission's proceedings and that certified copies of this resolution be presented to the Honorable Ralph Borman, his family, and also be forwarded to the Secretary of Defense, the Secretary of the Army and to Members of the North Dakota Congressional delegation in Washington, D.C.

Second by Oakey.

On the vote being taken on the question of the adoption of the resolution Commissioners Markey, McCannel, Oakey, Lashkowitz, and Hagen all voted "aye."

No commissioner being absent and none voting nay the vice president declared the resolution to have been duly passed and adopted.

HERSCHEL LASHKOWITZ,
Mayor and President, Board of City Commissioners.

A FUTURE FOR SMALL BUSINESS

Mr. PROUTY. Mr. President, is the American way of life irrevocably changing? I ask my colleagues to reflect on the status of small business.

We are a nation of many people. We are the leader of the free world. We are young and virile. But, we are great today not solely because of our machines—our technology—the sheer weight of our numbers. We are great because of little men, individuals who had the courage and wisdom to confront the future and say, "I will shape your course."

The early giants of industry, government and the arts were not the product of well oiled, well heeled corporations. They were the products of themselves, of individuality, of singleness of effort. They rose to greatness because they were once given the chance to be small. Ford, Edison, Carnegie—these were small businessmen, yes, small businessmen who became big businessmen in a future much of their own design. Where would this Nation be today if that old-fashioned kind of individuality had been forced out of business by some superior force?

The world of Ford and Edison and Carnegie is no more. America is fully industrialized, but the need of inventive spirit lives on. If these men were alive today could they conquer high taxation, mergers, and capital shortage?

Small business is in a predicament. Retailers, service industries, and small manufacturers all face tremendous odds in starting and operating small businesses. Small business is treated as dangerous by its larger rivals, risky by lending agencies accustomed to the high

finance operations of established concerns, and inefficient by sophisticates accustomed to wide variety, high volume, high discount management. In fact small business is none of these; it is an old and honored form of business full of the tradition and purposefulness which molded our present leaders in industry and government. Customers and clients are not statistics but real persons with individual desires and whims to which only small business can be responsive. Product and service quality are personal warranties of the seller. Management reliability and experience, not dollar volume, is the measure of businesses' responsibility.

No single item tells all of small businesses' difficulties. But it can be easily demonstrated that small business is waging a constant battle for the right to be small.

In this battle the almighty dollar is a force for both good and evil. It takes money to make money. When you are big, you have money or access to it. When you are small, you neither have it nor ready access to it. The big get bigger and the small get squeezed. The financial disparity of size can be that simply stated.

Under the Small Business Act, some businesses otherwise unable to raise funds have been aided through direct or participation loans by the Small Business Administration. The total dollar volume of these loans rises daily. For fiscal 1963 the SBA made 6,073 business loans totaling \$314 million.

A business with no credit record or a definitive history of profitable operation may not obtain SBA money. New businesses with high potential but little financial background have difficulty obtaining needed funds. Present programs should be reviewed to determine if the Small Business Administration can be put in a position to assume greater risks. Eugene P. Foley, Administrator of the Small Business Administration, is cognizant of this problem and has indicated that he will review the loan risk policy of the Administration.

Meanwhile, as the total dollar volume of small business loans increases, small business growth is otherwise thwarted. Its participation in military prime contract awards has fallen off severely. The small business share of such awards declined more than \$320 million between fiscal 1962 and fiscal 1963. So, while \$313,900,000 was being pumped into small business by SBA loans, \$320 million was being bled off by the decline in the small business share of prime military contracts. We are getting nowhere. In fact, we are losing ground at an alarming rate.

There are 19,000 fewer small manufacturers than there were in 1957, a decline of 5.8 percent, while the national economy expanded at half that rate every year.

On a percentage basis more people than ever before are entering the labor force as employees than as proprietors. Stimuli for becoming your own boss are engulfed in the quest for bigness. No

more can a man honestly say that his future is with himself. That desk among many in the office downtown is replacing the old backroom laboratory which spawned the likes of Marconi, Pasteur, and the Wright brothers. Only a modern-day David could take on our present Goliaths and he would have no historical guarantee of success.

Let me, for a moment, touch on a note that is not often enough discussed by those concerned with the future of small business. When small business declines, personal freedom declines. No man is so free as the man who is his own boss.

There are those who cannot stand the strain of self-employment. For them there is profit and reward working for somebody else. That is the freedom and flexibility of our system.

But it is equally as essential to that freedom and that flexibility that the door be left open for those who choose self-employment. When this opportunity is foreclosed a piece of the American dream vanishes.

Bigness in business, bigness is labor, and bigness in Government are byproducts of our growing country. War and the threat of war have created new technological demands on Government and business. Each has grown to meet the challenge. And, as business grows, labor grows. So, we must not view bigness itself as a mortal enemy. But we cannot condone bigness to the exclusion of individuality—bigness to the exclusion of smallness.

Government, business, and labor have the obligation to come to the aid of small business. Small business is not a helpless dependent of affluent parents. It is a forefather of our present greatness. If it is left to wither by disinterested heirs, the arteries of national commerce will harden, springs of industrial creation will run dry, and the body politic may be forced to socialize small business to keep vital machinery running.

We cannot and must not acknowledge the demise of small business as a natural consequence of the new nuclear world. Small business is the bedrock of private enterprise. It is capitalism's shield against creeping socialism. We must not let it down.

On January 15, 1963, I introduced Senate Resolution 30, a resolution designed to give the Senate Small Business Committee legislative status and continuity. Small business needs a champion here on the Hill. It needs a protector. It needs a willing ear in Congress. It needs someone to take the fight forward.

The resolution was referred to the Senate Rules Committee. Fifty-four Senators declared in support of it but no action has been taken by the committee to date. I urge the Members of this body and the public at large to ask the Rules Committee to consider this resolution at the committee's earliest convenience.

The future of small business slips a notch in passing every day. We can no longer afford to defer its problems to the future. For small businessmen across this great country their only hope for a future is the hope for action today.

DECEMBER 17, 1963, WRIGHT BROTHERS DAY

Mr. SALTONSTALL. Mr. President, "The dream of yesterday is the hope of today and the reality of tomorrow." These words from Dr. Robert Goddard, a native son of Massachusetts and the father of modern day rocketry, characterize man's effort to fly, an effort that has yielded a menagerie of dreams, designs, and devices. Even a \$50,000 launching device could not bring triumph to Samuel Langley in 1903. A few days later, however, two unknown men from Dayton, Ohio, launched their *Flyer* and the minutes which followed are enshrined in our Nation's history.

Ten years of experimentation and \$5,000 in expenses had brought not only success, but also immortality to Wilbur and Orville Wright. Today we celebrate the 60th anniversary of powered flight by heavier-than-air craft. It is indeed fitting that the day be known as Wright Brothers Day.

We are all familiar with the event 60 years ago in North Carolina. Many of us, however, do not realize the extensive experimentation which enabled these two men to succeed where countless others had failed. To us the principles appear elementary and the equipment rather simple. Both, however, were revolutionary for that time. For example, through thousands of wind tunnel experiments with various wing shapes, the Wright brothers developed entirely new air pressure tables. They discovered that by moving various aircraft surfaces in flight they could control balance, elevation, and steering. As a result, the Wright brothers devised a hinged rudder and ailerons and they linked movable parts together. This "linkage" system, the basis of control of all aircraft today, is considered to be one of the most significant inventions in aviation history. In addition, the Wright brothers developed a special lightweight motor and a new kind of propeller which proved to be 66 percent more efficient. The attention to detail and the years of experimentation were fundamental to the triumph which we commemorate on Wright Brothers Day.

The pioneering spirit, the determination, and the ability exemplified by the Wright brothers are the essence of human progress. They were neither inhibited by the predictions of failure from those who had not tried, nor were they dissuaded by the tragedies of those who had tried. As we recall that historic day, let us draw inspiration from the two men who made this aged dream a reality. In this space age, our efforts must also be a combination of bold design and prudent preparation.

PRESIDENTIAL DISABILITY

Mr. BAYH. Mr. President, last week I introduced Senate Joint Resolution 139, a proposed amendment to the Constitution which would: first, provide for the selection of a new Vice President to fill any vacancy in that office, second, change the order of succession, and

third, establish machinery for the resolution of problems arising out of temporary Presidential disability.

Subsequent to introduction of that amendment—which has been cosponsored by Senators BURDICK, LONG of Missouri, MOSS, PELL, and RANDOLPH—I have had placed in the RECORD articles by such distinguished writers as Walter Lippmann, Richard Neustadt, James Reston, Richard Morris, and Arthur Krock, dealing with the general problem of succession. Today I ask unanimous consent to have reprinted at this point in the RECORD a number of editorials which have appeared in recent weeks dealing more specifically with the important question of Presidential inability.

I would like to include columns by Marquis Childs, Roscoe Drummond, Arthur Krock, and Neal Stanford, as well as an editorial from the Washington Post and two from the New York Times.

Generally speaking, these articles and editorials propose no definitive solutions to the problem of disability; but they are unanimous in their concern that something be done soon to formalize procedures in this matter. I believe that sections 3, 4, and 5 of my amendment deal effectively with this problem.

There being no objection, the articles and the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Post, Nov. 29, 1963]

THE SHAKY LINE OF SUCCESSION
(By Marquis Childs)

No one who has spent even a brief time with President Lyndon B. Johnson can doubt his remarkable vigor. Even for the auditor a conversation with the man who was Senate majority leader and then Vice President is a physical exercise. While the visitor sits beside his desk he takes not one but two telephone calls simultaneously, speaking first on one extension and then another.

He bounces up and prowls the room with restless energy. His points are made with sharp emphasis as he speaks with machine-gun intensity. By way of underscoring what he is saying he pounds the desk and, leaning forward, he grips the arm of his listener to accentuate the gravity of his words.

The drive, the pace, as the last few critical and demanding days have shown is unflagging. Yet, when this is said, the fact remains that, in the cliché so often used, one heartbeat separates the Presidency today from House Speaker JOHN MCCORMACK. McCormack, who does not appear to be in the most robust health, will be 72 years old next month.

The fact, too, is that in July 1955, Mr. Johnson suffered a severe heart attack. It was announced that he would be unable to resume his duties as majority leader during the current session of Congress. The acting leadership role was taken over by Senator Earle C. Clements of Kentucky. Two months after the attack Johnson was discharged from Bethesda Naval Hospital after a report of steady improvement.

When he had been in office only 2 months upon inheriting the Presidency on the death of Franklin Roosevelt in April 1945, Harry S. Truman sent a special message to Congress on the presidential succession. The Succession Act, which had not been amended since 1886, provided that following the Vice President the office should pass to the President pro tempore of the Senate and then to the Speaker of the House. Third in line would be the Secretary of State,

with the other Cabinet officers following in the order of their rank.

The then President pro tempore of the Senate—the majority member with the longest service—was Senator Kenneth McKellar of Tennessee. McKellar, who concealed his age, had begun his service in the House in 1911, in the Senate in 1917. His increasing irascibility and arbitrary exercise of authority in key committee posts led to the belief he was suffering from senility.

Truman proposed that the order of 1886 be reversed and the Speaker of the House put first in line with the President pro tempore second. Speaker Sam Rayburn was then 63 and regarded as one of the wisest and most knowledgeable men in the entire Government. One of his principal allies in the House was a rising young Texas Congressman named Lyndon Johnson.

Under the Truman plan a successor would hold office until the next congressional election or until a special election had been called. The House, eager to endorse this tribute to Rayburn, adopted the Truman proposal almost at once, omitting the special election provision. Not until June 27, 1947, did a reluctant Senate follow suit.

Jealousy, sentiment, indifference have stood in the way of any realistic and far-reaching action on the succession. The issue has been cloudy and confused from the beginning. The Founding Fathers were unhappy with the Succession Act approved in 1792 when many of the authors of the American system were still in Congress or the executive branch.

The President pro tempore of the Senate today is Senator CARL HAYDEN of Arizona. He is 85 years old. Neither MCCORMACK nor HAYDEN has had any experience in foreign policy. Surely they must both feel a sense of dread that the Presidency in a time of fearful responsibility and extraordinary peril might by some tragic mischance devolve on them.

Surely, therefore, this is the time to adopt a carefully thought out plan of succession. Congressional committees have piled up reports on the subject and political scientists galore have analyzed it. A broad range of proposals is at hand. They could be considered without lengthy committee hearings.

"You assume," a wise foreign observer once remarked, "that your Presidents are immortal. In view of the record it is a false assumption as well, in view of the need for continuity of government, as a dangerous assumption."

So much is conveniently ignored, including what happens when a President is disabled. Woodrow Wilson lay paralyzed for a year and a half and the Government, too, was paralyzed. The risks today are infinitely greater than they were then.

[From the Washington (D.C.) Post, Dec. 7, 1963]

DISABILITY PROBLEM: A CONSTITUTIONAL GAP
(By Roscoe Drummond)

It is immensely valuable that the President's bipartisan commission, headed by Chief Justice Earl Warren, is studying, appraising, and preparing to report to the country all the evidence bearing on the assassination of John F. Kennedy.

This needs to be done. By virtue of the stature of the panel, it is going to be done well.

But there is something equally vital and urgent—in fact, because it concerns the present and the future, more vital and more urgent—than this useful inquiry into the past.

I refer to the necessity of repairing at the earliest possible moment the gaping hole in the Constitution as to what happens when a President is tem-

porarily unable to discharge his duties because of illness or any other emergency.

In the wake of President Eisenhower's heart attack and subsequent illnesses, Congress walked right up to this problem—and stopped. At this time only one voice is being raised in behalf of beginning now, without delay, the action needed to correct the constitutional defect which can no longer be safely left as it is. This is the voice of Senator KENNETH KEATING, Republican, of New York.

Let me state the problem briefly. The Constitution provides in article II that in case of the inability of the President "to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . ."

This leaves unclear and unsettled so many matters that twice in our history, in the last exacting times of Presidents Garfield and Wilson, the Government was paralyzed for months. In today's world, the U.S. Government cannot afford to be paralyzed for minutes.

Here are the matters which the Constitution leaves unanswered:

Who shall decide when a President is for any reason unable to discharge his duties and how?

Who shall decide when a President is ready to assume his duties and how?

What is to be done if a disabled President seeks to assert his authority before he has recovered?

In case of the disability of the President, does the Vice President—or the man next in line—succeed to the office of President or only to the duties of the Presidency?

This latter question is moot. Some distinguished constitutional scholars hold that the Vice President would merely act as President temporarily. Others hold that he would in fact become President for the remainder of the term.

This is not an academic question. Because of this uncertainty, two Vice Presidents refused to discharge the duties of President during long inability for fear the President would think they were trying to seize the office from him. When Garfield was ill and when Wilson was paralyzed for months, the real difficulty was not to determine inability. In each case the Vice President either did not wish or did not dare to move because he was not sure that the President could then take back the office again.

Bear in mind that three out of the last four Presidents have been the targets of an assassin's bullets—Roosevelt, Truman, and Kennedy. Each could have suffered long disability.

Bear in mind that President Johnson as well as President Eisenhower have suffered serious heart attacks.

It is not ghoulish to face this problem openly and candidly. It is recklessly irresponsible not to do so.

Senator KEATING is making the right beginning by proposing a constitutional amendment authorizing Congress to enact that necessary clarifying legislation.

[From the New York Times, Nov. 24, 1963]
THE CONTINUUM: KENNEDY'S DEATH POINTS
UP ORDERLY PROGRESSION IN U.S. GOVERNMENT

(By Arthur Krock)

WASHINGTON, November 23.—There are two great tragedies to mourn at the bier of the young President of the United States. The supreme tragedy is the untimely death of the elected chief of the Nation in the flower of his prime and of his extraordinary attainments. The other is the failure of even advanced democracy and self-government to extirpate in mankind the resort to anarchy that has violently sundered the lives of 4 of the 35 men who thus far have served in the highest office of the Nation.

As on those four previous occasions, and also when President Truman, President Jackson, and President-elect F. D. Roosevelt were the targets of unsuccessful attempts at assassination, the bullet which struck down John Fitzgerald Kennedy was forged in conditions of intense political controversy. Only Czolgosz, the murderer of President McKinley, declared that service to the political cult of anarchy was the purpose of his crime. The other three were moved by crazed emotional reaction to the violence with which Americans still express their differences over how to deal with national and international problems—the latest instance having apparently been generated in the international left wing.

MET UNUSUAL TESTS

But, whatever the source of the impulse to express it by assassination of the citizen who is the symbol of the American state, the melancholy fact remains that one bullet fired by a madman has consigned to dust the heart and mind that gallantly met unusual tests of war, rebuffed encroaching death in critical illness and overcame hitherto insuperable obstacles to attainment of the Office of President.

But, as they mourn the unreckonable liabilities of their loss and ponder the black recesses of the human mind that resist all the enlightenment of democratic self-government, the American people again have cause for gratitude to a few lines in the Constitution that were written 174 years ago. It is these lines which have made the Government of the United States a continuum that calamities like this, even in times of deep internal controversy, cannot interrupt or break. The lines occur in clause 6, section 1, article II of the Constitution:

"In case of the * * * death [of the President] [the] powers and duties of the said office * * * shall devolve on the Vice President."

But, foresighted as were the makers of the Constitution in 1789, they left loopholes in this insurance policy of continuous government. And it is Congress, most lately in 1947, to whom the American people owe the Acts of Succession that provide for this continuity when, as on the succession of Mr. Truman to the vacancy created by the death of Franklin D. Roosevelt, there was no Vice President on whom the "powers and duties of the office" could devolve.

The writers of the Constitution had anticipated this situation in part, but only to the extent of authorizing Congress to decide what "officer of the Government shall act as President" in the event of the deaths of both the President and the Vice President. And, in 1886, Congress had exercised this authority by a statute providing that, in these circumstances, presidential succession should begin with the Secretary of State and proceed in order through other members of the Cabinet.

But the potential effect of this was to turn over the Presidency to a person not elected by the people, since the members of the Cabinet serve by appointment. So, in 1947, Congress changed the line of succession as follows, if both the two highest elective posts were vacant: the Speaker of the House, the President pro tempore of the Senate (both elected national officers), and thereafter members of the Cabinet beginning with the Secretary of State.

ADEQUATE PROVISION

But clause 6, section 1 of article II is adequate provision for continuity of the U.S. Government, in the circumstances created by the death of President Kennedy, because there is a living Vice President. Hence the administration of the Presidential oath to Lyndon Baines Johnson, of Texas, was automatic constitutional procedure. If conditions had made it necessary, this could have been done the moment Mr. Kennedy was

pronounced dead in the hospital at Dallas. But, since the delay was only 1 hour 39 minutes, there was virtually no "interregnum."

However, Congress has permitted another serious loophole in the Constitution to remain throughout the 174 years it has existed. This is the failure of the national charter to provide for incidents when the Presidential incumbent, for physical, mental, or other reasons, is unable to "discharge the powers and duties of the office." Left wholly unsettled are these momentous questions:

If the President declares his "inability," does the Vice President exercise the powers and duties as President or as acting President during the period of the inability, whether or not that endures for the remainder of the term to which the President was elected?

QUESTIONS RAISED

What is "inability"? Who raises the question of when it has occurred and when it has ended, and who resolves these questions when they have been raised?

Suppose a disabled President refuses to certify it, or, if he asserts it, proclaims the end of his disability when it still exists, how is the Government crisis to be met?

One of the best studies of the subject was published by John D. Ferrick in the October 1963 issue of the *Fordham Law Review*. His solution is a constitutional amendment. It would authorize the Vice President, after consultation with the Cabinet, to make a determination of Presidential disability when the President is unwilling or unable to do so. But, even in these circumstances, the President alone could declare the end of his disability. And this still does not cover current situations when there is no Vice President.

[From the *Christian Science Monitor*, Dec. 7, 1963]

THE LINE OF SUCCESSION

(By Neal Stanford)

Washington and the country are gradually becoming aware that there are some gaps and uncertainties in the law governing succession to the Presidency.

Naturally, then, there is increasing talk of the need to clarify the situation quickly, now that the United States has no Vice President.

Under a 1947 law, the line of succession runs from the Vice President to the Speaker of the House of Representatives, to the President pro tempore of the Senate, and then through members of the Cabinet—State, Treasury, Defense, and on down.

Thus, President Johnson's immediate successors would be, first, Speaker of the House, JOHN W. MCCORMACK, Democrat, of Massachusetts, who is 71; then, presumably, President pro tempore of the Senate, currently 86-year-old CARL HAYDEN, Democrat, of Arizona.

But a close reading of the 1947 law, it now appears, would not have Senator HAYDEN succeeding Representative MCCORMACK, but rather Representative MCCORMACK succeeded by whomever would have been named Speaker of the House when MCCORMACK became President.

Thus, the line of succession would normally actually never go further than the Speaker of the House, for a new Speaker would always be named, presumably, when the old one moved up into the White House.

There are two conditions, however, under which this would not happen: One, if the death of the President who had been Speaker came at a time when the House had not yet elected a new Speaker; two, if the new Speaker, because foreign born or too young for the Presidency was ineligible.

Several proposals have been made these last few days to clarify this matter of succession. One is to clearly make the President pro tempore of the Senate successor to the Speaker

of the House, should the latter be elevated to the Presidency. Another is to have the people elect a second Vice President who could immediately take over the duties of the Vice President, not leaving that post vacant—as it is now.

The other matter involving succession that seems to require attention concerns the question of what happens in case of temporary disability of the President.

President Eisenhower had an agreement with Vice President Nixon, and President Kennedy with Vice President Johnson, providing for the temporary assumption by the Vice President of the full powers of the Presidency in case of physical disability, with the President resuming full powers when he declared himself able to do so. At the moment President Johnson is discussing some comparable agreement with Speaker MCCORMACK to cover the present situation.

But this matter of succession in case of disability is more complex than at first appears. Those who have closely examined the 1947 law say that it would require Speaker MCCORMACK to resign from the speakership and the House, if he were to assume the powers of the Presidency even temporarily. Were Mr. Johnson to recover, he would resume the powers of the Presidency, but that would leave Mr. MCCORMACK with no job as Speaker or a seat in the House. This is obviously a situation that needs to be anticipated and provided for. It does not arise in the case of a Vice President who would automatically return to being Vice President since no one steps into his job. The Government can operate without a Vice President, but not without a Speaker of the House.

In the case of temporary presidential disability it is conceivable that a Speaker of the House would decline the job of temporary Chief Executive to save his House post. Such a possibility spotlights the need for this whole question of presidential succession (particularly in the case of temporary presidential disability) to be thrashed out and resolved.

One situation that some in Washington are saying also needs study and clarification is what happens to succession in case of a national disaster, when the entire top layer of American officialdom might be wiped out?

There has been talk of making State Governors temporarily responsible for Federal authority.

The more immediate task, though, is to make sure the arrangement for presidential succession is what the country and Congress wants, and that it covers presidential incapacity as well as the death of a Chief Executive.

[From the *Washington (D.C.) Post*, Dec. 14, 1963]

POSSIBLE "ACTING PRESIDENT"

There is nothing more than academic interest in the suit filed in New Mexico to have President Johnson demoted to "acting President." Every time a Vice President succeeds to the White House some scholars revive the assertion that the Founding Fathers never intended that the Vice President should acquire all the prestige and panoply of the Presidency itself. They may be right so far as the original intent is concerned. But an unbroken line of precedents since Vice President Tyler succeeded President Harrison in 1841 has established an almost unchallengeable constitutional usage that is not likely to be altered.

This interpretation has been pointedly confirmed, moreover, by the 20th amendment, which provides that "if, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President." Certainly this settled view best serves the national interest. It would be most unfortunate

nate for the country to limp along with an "acting President" for possibly 3 years or more. The chief mitigating factor about the recent tragedy is the firmness with which the new President has taken over the reins of power.

What is true of the Vice President's escalation to the role of President would not be true, however, of a Speaker of the House suddenly called upon to exercise the Presidential powers. The Constitution itself seems to draw a distinction between the Vice President and other officers placed in the line of succession by act of Congress. It says that in case of death, resignation, impeachment, or inability on the part of the President the powers and duties of the office "shall devolve on the Vice President." In the absence of both a President and a Vice President, an officer designated by Congress may "act as President" until the disability of the man entitled to the office be removed or a President shall be elected.

Whether or not this difference in language is significant, Congress itself has provided that the title of a Speaker exercising the Presidential powers should be "acting President." In its succession act of 1947 Congress steered clear of the concept that it had written into the 20th amendment in regard to the Vice President. Not only does it say that the Speaker should "act as President" when there is neither President nor Vice President; it also provides that if there is no Speaker or if "the Speaker fails to qualify as acting President," then the President pro tempore of the Senate shall "act as President."

Here is another major reason for repeal of this misguided statute. If a double tragedy should occur early in a presidential term, this law would leave no alternative to the toleration of an "acting President" for an extended period. Certainly if the successor is to be kept in an "acting" role, a special presidential election should be provided on the next regular congressional election day. This aspect of the 1947 law buttresses anew our feeling that it should be repealed and that a major study of presidential succession should be undertaken.

[From the New York Times, Dec. 1, 1963]

IF THE PRESIDENT?

The present Congress in its session next year must face a pressing subject that has baffled the Founding Fathers and at least seven Congresses in the last century and this: the contingencies of presidential disability and succession.

The Constitution and the United States Code tell us—up to a point—the sequence if a President dies. But this leaves open the question of what happens if a President (or his successor by law) is gravely ill or disabled. Who is to decide inability to function? What happens when recovery occurs after a disability? How can the Office of the President be safeguarded against encroachment by a willful group in or outside the Government?

After the serious illnesses of President Eisenhower, the Senate and House held hearings on this aspect of succession. A number of serious proposals were made then and thereafter: creation of an Inability Commission, including members of the Supreme Court; a decision by the Vice President, if possible after consulting with the President, otherwise after consulting members of the Government; decisions by the Cabinet or by both Houses of Congress. Both President Eisenhower and President Kennedy entered into private agreements with their Vice Presidents, permitting the President to make the inability decision himself or, if unable to do so, throwing the terrible burden of decision on the Vice President and the Cabinet.

The Congress must recognize that private arrangements are, as we noted a few days

ago, unsatisfactory. What is called for now is a renewed effort at legislation that would lead to a constitutional amendment or a clarifying resolution by both Houses of Congress.

We are asking much of the present Congress in asking it to solve a problem that the Founding Fathers left unresolved. The deaths of Presidents and the illnesses of Presidents have caused confusion and disension in the past. The time to clarify presidential inability or disablement is now—when the subject of succession is in the forefront of the thoughts of a shocked nation.

[From the New York Times, Dec. 7, 1963]

STOPGAP ON SUCCESSION

President Johnson's agreement with Speaker JOHN W. MCCORMACK about carrying on the duties of the Presidency when the incumbent becomes disabled is probably as good a stopgap arrangement as could be devised, but it is no adequate solution for this difficult problem. It provides that the Speaker would become Acting President if the President became disabled. The President would resume his powers when he determined that his disability had ended.

There is no provision, however, for a situation in which the President might be unfit to serve, but insisted on retaining his powers. In this juncture of the world's history, when the fate of the Nation and the world may hang on an instant decision of the Chief Executive, there must never be the least doubt about who is exercising his powers and responsibilities.

The questions of what constitutes Presidential disability; who decides when it exists; whether the next person in line of succession becomes President or merely Acting President, and how the President may resume his powers when his disability has ended are not defined with any degree of precision. Congress has before it a constitutional amendment, approved by a Senate Judiciary subcommittee after extensive hearings, that would delegate to Congress authority for determining the proper procedures. It should receive prompt consideration.

There is no question of the power of Congress to determine the line of succession to the Presidency after the Vice President. It has exercised that power three times. From 1792 until 1886 the President pro tempore of the Senate was designated; from 1886 until 1947 the Secretary of State was next in line; the Presidential Succession Act of 1947 named the Speaker, on the theory that an elected official should be preferred to an appointed one, even though it might result in the elevation to the Presidency of a member of a party opposed to the President's.

Now it is noted that Speaker MCCORMACK would have to resign his congressional seat if he became Acting President. He would then revert to private life if the President resumed office. Is this a proper penalty for the holder of one of the chief offices in the Government to have to pay for temporarily serving his country in its highest post?

The question of the presidential succession is a quite different question from that of the President's inability to serve. Both questions are extremely important and both deserve careful reconsideration now.

REVENUE ACT OF 1963—

AMENDMENT

Mr. DIRKSEN. Mr. President, last Friday I submitted an amendment—amendment No. 361, intended to be proposed by me to the pending tax revision bill H.R. 8363 which is before the Committee on Finance. My amendment would add a new subsection 11 to section 401(a) of the Internal Revenue Code and would permit domestic corporations

to include U.S. citizens employed abroad in their qualified benefit plans insofar as they are included for U.S. social security purposes. The following is an explanation of this amendment and an account of the background that led to it.

The retirement benefits of U.S. employees flow principally from two sources—the public plan of U.S. social security and the private plan of the U.S. employer. These two sources of retirement income are in most cases "integrated" so that the private plan pays an amount adjusted for the amount to be received under the public plan. In a real sense, therefore, the private and public plans are interdependent and are considered together in providing the total retirement benefit.

Since 1954 the Internal Revenue Code has permitted a domestic corporation to extend U.S. social security coverage to U.S. citizens employed by its foreign subsidiaries, such employees being deemed to be employees of the domestic parent company for this purpose. Under the present law, U.S. citizens working outside the United States for foreign subsidiaries of domestic corporations may be covered under old-age and survivors insurance by means of agreements between the parent company and the Secretary of the Treasury or his delegate. Coverage is available only to U.S. citizens who are employed either by a foreign subsidiary in which the domestic corporation holds 20 percent or more of the voting stock, or by another foreign corporation in which such foreign subsidiary holds more than 50 percent of the voting stock.

There is no comparable method for extending the coverage of the private plan to such U.S. citizens. If the U.S. citizen becomes an employee of the foreign subsidiary, he is no longer eligible to participate in the plan of the domestic parent corporation. Furthermore, the foreign subsidiary cannot establish a private plan identical with the domestic plan, and obtain the approval of the Internal Revenue Service, unless it includes in the plan the foreign nationals on its payroll. This is not only a heavy cost burden because the employees of such subsidiaries are predominantly foreign nationals, but experience has proved that the foreign nationals are interested in different patterns of retirement benefits depending on their local customs. The practice has been to develop separate plans for foreign nationals in keeping with their concepts. On the other hand, the U.S. citizen has close economic and personal ties with the United States, expects to return home, and wishes to stay within the retirement benefit pattern and funding arrangements of the domestic corporation.

The purpose of the proposed amendment to section 401 of the Internal Revenue Code is to enable U.S. employers to include in their qualified benefit plans U.S. citizens working abroad in the same manner that such employees may be included for U.S. social security purposes. This is no more than extension to private plans of a procedure now in effect for the public plan of social security.

There is, however, one important distinction. Under the public plan of social security, the domestic corporation is allowed to pay and deduct both the employer and the employee contributions for social security—section 176. Under this amendment with respect to qualified private plans, the domestic corporation would be allowed—in applying section 404—to deduct only the employer contributions to the qualified plan. It is contemplated that arrangements will be made under which such employees will bear the cost of their own contributions, where the plan so requires, and will receive the same tax treatment on distributions as other employees of the domestic corporation.

The amendment is limited to the qualified pension, profit sharing and stock bonus plans of the U.S. employer because these benefits are most closely related to U.S. social security benefits. It is a condition precedent to the operation of the amendment that the Secretary or his delegate have by agreement approved such an arrangement for social security purposes, and the status of the employee for qualified plan purposes is coterminous with his status for social security purposes. The amendment operates on an elective rather than mandatory basis to provide each U.S. employer with latitude of action in this matter.

U.S. PARTICIPATION IN THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Mr. HUMPHREY. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 762, House Joint Resolution 778.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The LEGISLATIVE CLERK. A joint resolution (H.J. Res. 778) to provide for participation by the Government of the United States in the Hague Conference on Private International Law and the International (Rome) Institute for the Unification of Private Law, and authorizing appropriations therefor.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to, and the joint resolution (H.J. Res. 778) was considered, ordered to a third reading, read the third time, and passed.

MEMBERSHIP AND PARTICIPATION BY THE UNITED STATES IN THE SOUTH PACIFIC COMMISSION

Mr. HUMPHREY. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 763, House Joint Resolution 779.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The LEGISLATIVE CLERK. A joint resolution (H.J. Res. 779) to amend the joint resolution of January 28, 1948, relating to membership and participation by the United States in the South Pacific Commission, so as to authorize certain appropriations thereunder for the fiscal years 1964 and 1965.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to; and the Senate proceeded to consider the joint resolution, which had been reported from the Committee on Foreign Relations, with amendments, on page 2, line 1, after the word "year", to strike out "1964" and insert "1965", and in line 2, after the word "year", to strike out "1965" and insert "1966".

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The amendments were agreed to.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the joint resolution.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution (H.J. Res. 779) was read the third time and passed.

The title was amended so as to read: "Joint resolution to amend the joint resolution of January 28, 1948, relating to membership and participation by the United States in the South Pacific Commission, so as to authorize certain appropriations thereunder for the fiscal years 1965 and 1966."

Mr. HUMPHREY. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 782), explaining the purposes of the joint resolution.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

I. BACKGROUND AND PURPOSE

The South Pacific Commission, created in 1948, is composed of the United States, the United Kingdom, France, Australia, and New Zealand. The U.S. territories of American Samoa and Guam, as well as the Trust Territory of the Pacific Islands, are covered by the Commission's activities, which are primarily in the fields of economic development, social development, and health.

At present, there is a \$100,000 annual limitation on the U.S. contribution to the South Pacific Commission. House Joint Resolution 779, as reported, would authorize the appropriation of \$150,000 for fiscal year 1965, and \$150,000 for fiscal year 1966, for the payment by the United States of its proportionate share of the expenses of the Commission and its auxiliary and subsidiary bodies. The fiscal year of the Commission is the calendar year. Therefore, the committee amended the joint resolution to make clear that the authorization of appropriations in the joint resolution is to provide for the U.S. share of the costs of the South Pacific Commission for calendar years 1964 and 1965.

The proposed increase would make possible a moderate increase in the Commission's work program and would also enable the United States to raise, from 12½ to 20 percent, its contribution to the total budget of the Commission. A reapportionment of percentage contributions was made necessary by the withdrawal of the Netherlands from the Commission after it ceased to administer Netherlands New Guinea. It is believed equitable that the United States assume half of the 15-percent share formerly contributed by the Netherlands. Since the time when the U.S. share was set at 12½ percent, additional U.S. territory (Guam and the Trust Territory of the Pacific Islands)

has been placed within the scope of the Commission. The increased U.S. contribution would also reflect the benefit derived by the U.S. territories from the work of the Commission and a recognition of the primary importance of the Pacific Islands to the security of the United States and the free world.

CORREGIDOR-BATAAN MEMORIAL COMMISSION

Mr. HUMPHREY. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 764, H.R. 7044.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 7044) to amend Public Law 193, 83d Congress, relating to the Corregidor-Bataan Memorial Commission.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to; and the bill (H.R. 7044) was considered, ordered to a third reading, read the third time, and passed.

Mr. HUMPHREY. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 783), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

H.R. 7044 authorizes the appropriation of \$1,500,000 for the purpose of developing Corregidor Island in Manila Bay as a memorial site to the Philippine and American soldiers, sailors, and marines who lost their lives while serving in the Pacific area during World War II. The memorial site is to include twin flagpoles from which the American and Philippine flags would fly, a building or buildings suitable for use as an auditorium and tourist center, and a contiguous battlefield park with appropriate markers and mementos of the Pacific phase of World War II.

BACKGROUND

The Corregidor-Bataan Memorial Commission has attempted since the date of its establishment in 1953 to bring to a conclusion its task to cooperate with a similarly appointed Philippine commission in a "study for the survey, location, and erection on Corregidor Island of a building and other structures, and the use of Corregidor Island as a memorial to the Philippine and American soldiers, sailors, and marines who lost their lives while serving in the Pacific area during World War II." Several plans put forth by the Commission during this period failed to win sufficient support for enactment. The most recent of these was a proposal to finance a substantial memorial, estimated to cost \$7,500,000 through the sales of U.S. surplus naval vessels.

The basis for the present proposal was laid in June of 1962, during a visit of Philippine Vice President Pelaez with President Kennedy, at which time agreement was reached to proceed along the lines contemplated in H.R. 7044. Subsequently, in a note dated July 20, 1962, the Philippine Government accepted the responsibility for the continual maintenance of the battlefield site when restored with the assistance of the United States.

As evidence of its good faith, the Philippine Government has already begun to clear the site, which has become overgrown through the years, and has authorized the appropriation of 4 million pesos (approximately \$1,500,000).

EXEMPTION FROM INDUCTION FOR SOLE SURVIVING SON OF A DE- CEASED VETERAN

Mr. HUMPHREY. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 755, H.R. 2664.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 2664) to amend section 6(o) of the Universal Military Training and Service Act to provide an exemption from induction for the sole surviving son of a family whose father died as a result of military service.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services with amendments.

Mr. HUMPHREY. Mr. President, it is my understanding that the chairman of the Committee on Armed Services, the Senator from Georgia [Mr. RUSSELL], or the Senator from Washington [Mr. JACKSON], might wish to be present for the discussion on the bill. I know that the Senator from New York [Mr. KEATING] desires to comment on the bill. Therefore, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. YARBOROUGH in the chair). Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, the pending business is Calendar No. 755, House bill 2664, is it not?

The PRESIDING OFFICER. That is correct.

The first committee amendment will be stated.

The LEGISLATIVE CLERK. On page 1, in line 4 after the word "amended", it is proposed to insert "to read as follows:".

Mr. HUMPHREY. Mr. President, I understand that the able Senator from New York [Mr. KEATING] wishes to be heard on this committee amendment. Is that correct?

Mr. KEATING. I wish to be heard in opposition to the amendment in the nature of a substitute, which would substitute new language for the text voted by the House of Representatives.

Mr. HUMPHREY. Mr. President, I understand that the Senator from New York desires to object to the second committee amendment, not the first committee amendment.

Mr. KEATING. I am not concerned about the proposed addition of the words "to read as follows:", although sometimes "to read as follows:" may cover several pages of text. The material on the second page is that to which I object.

The PRESIDING OFFICER. The question now is on agreeing to the first committee amendment.

The amendment was agreed to.

The PRESIDING OFFICER (Mr. INOUYE in the chair). The second committee amendment will be stated.

The LEGISLATIVE CLERK. On page 1, beginning in line 6, it is proposed to strike out the following:

(1) by inserting the words "the father or" after the word "Where"; and

(2) by inserting the words "unless he volunteers for induction" after the words "of this title".

And to insert in lieu thereof:

The sole surviving son of a family shall not be inducted under the terms of this title unless he volunteers for induction (1) where one or more sons or daughters of such family were killed in action or died in line of duty while serving in the Armed Forces of the United States, or subsequently died as a result of injuries received or disease incurred during such service, or (2) except during the period of a war or national emergency declared by the Congress subsequent to the date of the amendment of this subsection, where the father of such family was killed in action or died in line of duty while serving in the Armed Forces of the United States, or subsequently died as a result of injuries received or disease incurred during such service.

The PRESIDING OFFICER. This is the second committee amendment.

The question is on agreeing to the second committee amendment.

Mr. KEATING. Mr. President, I seek recognition to speak in opposition to this committee amendment.

Mr. HUMPHREY. Mr. President, I yield the floor.

Mr. KEATING. Mr. President, the text voted by the House would be drastically changed by the committee amendment on page 2.

In July, I introduced Senate bill 1857, the purpose of which was the same as that of House bill 2664, as originally passed by the House; namely, to exempt the sole surviving son of a family whose father died as a result of military service.

House bill 2664 was passed by the House and was sent to the Senate. As that bill is now before the Senate, it has been reported with this committee amendment on page 2, which provides that this exemption shall not be effective in a period of war or national emergency hereinafter declared by Congress. In my judgment, this modification is unnecessary, and is at variance with the exemption provisions now in the draft law.

We all fully recognize that in this period of continuing international tensions there is need for a strong Defense Establishment, including both materiel and manpower. I would not press for the exemption of any group from military service if I thought that would in any way weaken our defenses.

Reference to the letters from the Department of the Army, expressing the views of the Department of Defense, and the Selective Service System in the committee report reveal that they have no objection whatever to House bill 2664 in its original form, as passed by the House.

Although any precise estimate as to the number of persons involved cannot be made, the Department of Defense suggests that probably the number would range between 6,000 and 11,000. The Selective Service states that the num-

ber would be what it calls minimal. So this measure does not affect a large number of men; and both the Department of Defense and the Selective Service are convinced that the exemption written into House bill 2664 would not, in a time of emergency, affect our defense. Should there ever arise a situation which would require us to engage in hostilities, Congress will always be in a position to withdraw all exemptions.

If there were to be some special provision under this exemption, I see no reason why it should not apply to all exemptions. We can—and most likely would, in a case of a great holocaust—withdraw all exemptions if we did not have the necessary personnel.

A basic consideration today is what, if any, exemptions from military service we are going to provide. Certainly there are some who believe, and with good reason, that everyone should serve for a period of time in one branch of our Armed Forces. And yet the idea of universal military training has never been accepted. Our legislation reflects a belief that the call to arms is an honor for every young citizen but that fulfillment of the military obligation imposes a greater sacrifice on some individuals and families than others.

Recognizing that the proper function of government in a free society is to serve the individual rather than the individual serving the state, we have provided certain exemptions in the Universal Training and Service Act to offset the burdens of extraordinary sacrifice. Thus, we have provided for deferment in cases of extreme hardship. By section 6(o) of the act, there is an exemption for the sole surviving son of a family where one or more sons or daughters were killed or died in line of duty. Recently, a September Executive order provided that all married men be exempt from induction until all available single men have been taken into the military.

Heretofore there has been no specific exemption for the sole surviving son of a family whose father died as a result of military service. H.R. 2664 is designed to remedy this oversight and inequity by extending the exemption of the act to include the sole surviving son of a family whose father was killed in action or died in the line of duty. Certainly, if we are going to exempt or exclude anyone from military duty the sole surviving son of one who dies in connection with military service should be afforded an exemption—recalling the bill provides an opportunity for these men to volunteer for induction.

The Defense Department wanted to make sure that if such a sole surviving son volunteered for induction, he would be able to go into the service. In a number of instances it has been called to my attention that a widow whose husband was killed in service has a son who may not be able to qualify under the hardship provision, but understandably she feels that, having given her husband to the service of his country, she should not be called upon to give her only son as well. But the bill as reported today cuts away the impact of the exemption in a time of national emergency without

changing the exemption granted to others. For in this single exemption, which I feel is as meritorious as others written into the law, or as others which have been incorporated in the Executive order, an express provision is written in to provide that it shall not take effect in the case of a national emergency.

Mr. President, this strikes me as completely inequitable and unjustifiable. In my judgment H.R. 2664, as passed by the House, is a fitting tribute to the fathers who made the supreme sacrifice to their country.

I hope that the amendment will not prevail, and that the language of the House bill will be accepted.

The PRESIDING OFFICER (Mr. YARBOROUGH in the chair). The question is on agreeing to the second committee amendment.

Mr. MORSE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MORSE. Mr. President, I ask unanimous consent that further proceedings under the quorum call may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the second committee amendment.

The amendment was rejected.

Mr. MORSE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MORSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORSE. Mr. President, I move that the vote by which the last amendment was rejected be reconsidered.

Mr. KEATING. Mr. President, will the Senator yield?

Mr. MORSE. I yield.

Mr. KEATING. I shall not oppose that motion under the circumstances, and shall not move to table it, because I understand there is difficulty bringing to the Chamber certain Senators who favor the amendment. I would not want to take undue advantage of them.

Mr. MORSE. The Senator never does. He is always gracious and cooperative.

Mr. KEATING. May I ask what the intention is following the reconsideration? I am still opposed to the amendment. Will the debate on the subject continue at this time?

Mr. MORSE. I yield to the majority leader.

Mr. MANSFIELD. Yes; and we shall try to get a vote on it.

The PRESIDING OFFICER. The question is on the motion to reconsider the vote by which the second committee amendment was rejected.

The motion to reconsider was agreed to.

Mr. KEATING. Mr. President, I am just as much opposed to this amendment as ever. Inasmuch as the Senate

voted once on the proposal and defeated the amendment inadvisedly inserted by the Senate Armed Services Committee, and no Senator has advanced any reason why it should be changed, and since it is desirable to have more Senators present, I suggest the absence of a quorum, and shall ask for the yeas and nays.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of morning business tomorrow there be a half hour on the pending measure, 15 minutes under the control of the distinguished Senator from New York [Mr. KEATING] and 15 minutes under the control of the distinguished Senator from Washington [Mr. JACKSON].

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The unanimous-consent agreement, as later reduced to writing, is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That, effective on Wednesday, December 18, 1963, at the conclusion of routine morning business, during the further consideration of the bill (H.R. 2664) to amend section 6(o) of the Universal Military Training and Service Act to provide an exemption from induction for the sole surviving son of a family whose father died as a result of military service, further debate on all amendments, motions, or appeals, and the bill shall be limited to 30 minutes, to be equally divided and controlled by the Senator from Washington [Mr. JACKSON] and the Senator from New York [Mr. KEATING]: *Provided*, That no amendment that is not germane to the provisions of the said bill shall be received.

ORDER FOR ADJOURNMENT TO TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate adjourns today, it adjourn to meet at 12 o'clock noon tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE AMERICAN MEDICAL ASSOCIATION AND THE OPERATION OF THE KERR-MILLS MEDICAL PROGRAM

Mr. McNAMARA. Mr. President, the political witch doctors of the American Medical Association have made another typically deceptive "contribution" to the public debate over medical care for the elderly.

In the pages of the current edition of their house organ, the American Medical Association News, the "medicrats" of the American Medical Association hierarchy have attempted to refute the well-documented conclusions of the recent report of the Health Subcommittee of the Senate Special Committee on Aging on the

operation of the Kerr-Mills medical assistance to the aged program.

This subcommittee report, it may be recalled, cited seven basic defects of the Kerr-Mills medical assistance to the aged program. The American Medical Association editorial, which has the misleading title "Kerr-Mills a Success," attempts a point-by-point rebuttal of these seven major points of criticism.

In the interests of accuracy, I wish to make a point-by-point analysis of this so-called rebuttal.

The first major defect cited by our subcommittee report stated that after 3 years, Kerr-Mills was still not a national program nor was there any reason to expect that it would become one in the foreseeable future.

The American Medical Association "rebuttal" to this statement was to hail as "a conspicuous accomplishment" the fact that after 3 years operation of the Kerr-Mills Act, there are still more than 7½ million elderly Americans living in States where Kerr-Mills still is not available at all, to say nothing of the millions of elderly people living in States where Kerr-Mills is in effect who are disqualified by the rigid and unrealistic eligibility tests.

It is interesting to note further that the American Medical Association in its most optimistic estimate, sees a maximum of 40 jurisdictions out of 54 utilizing the medical assistance to the aged program by some time next year.

Even the American Medical Association apparently dares not predict the date in the distant future when older Americans in all 50 States will have available to them the inadequate protection of Kerr-Mills medical assistance to the aged program.

Thus our criticism that Kerr-Mills medical-assistance-to-the-aged program is not now a national program nor is it likely to become one in the foreseeable future remains quite valid despite the fulminations of the American Medical Association editorialists.

Secondly, the American Medical Association editorialists in a frantic bit of figure finagling blandly assert that since an estimated 440,000 persons a year are receiving some help from Kerr-Mills that the program is fulfilling the congressional intent.

I would like to contrast this dubious 440,000 estimate concentrated in 29 States with the more than 17 million older people who would be eligible for assistance under the King-Anderson social security approach throughout the United States.

In this connection, the American Medical Association editorial erroneously asserts that our report overlooks and ignores the old-age assistance program, the medical assistance phase of which has been in effect since 1950 and was modified in part by the Kerr-Mills Act of 1960.

Admittedly, the emphasis of the report was on the medical assistance-to-the-aged program, because the purpose of this study was to evaluate this new program. However, the report does explore the relationship between the two programs with particular emphasis on

the shifting of persons from the old-age assistance program to the medical-assistance-to-the-aged program to take advantage of more generous Federal matching fund formulas.

But for the American Medical Association to blithely assert, as it does, that "the 2.2 million elderly who are entitled to old-age assistance medical care, do not need the medical-assistance-to-the-aged program" is to ignore the facts. If this were the case, why have nearly 100,000 old-age-assistance recipients been transferred to the medical-assistance-to-the-aged program by the various States?

Third, the American Medical Association concedes that Kerr-Mills benefits vary widely from State to State, as pointed out in our report, but then insists that "this can hardly be called a defect. The States have differing needs and economies and they have other aid programs."

Carrying this American Medical Association argument to a conclusion, one could assume that the more than 20 States which have not implemented Kerr-Mills either have no need or their economies cannot afford the burden of matching funds. While the latter may well be true in some instances, to assume that the 7½ million elderly people in the States without Kerr-Mills medical assistance to the aging have no need for the program is absurd.

Fourth, the American Medical Association apologists concede the accuracy of our report's statistics on administrative costs, that they go as high as 59 percent and average 6.9 percent. But they insist that administrative costs are always high in a new program.

What they fail to point out, as stressed in our report, is that administrative costs for a social security financed program would amount to only 3 percent, or less than half the medical-assistance-to-the-aged average.

Fifth, the American Medical Association resorts to figure juggling in an attempt to justify the grossly disproportionate distribution of Kerr-Mills medical-assistance-to-the-aged funds. Conceding that the five States got 88 percent of medical-assistance-to-the-aged funds through 1962, the American Medical Association tricksters assert that these five urban States contain almost 60 percent of the aged in medical-assistance-to-the-aged States.

Now this is a typical example of American Medical Association deception and distortion, because the honest comparison here is not with the States that have adopted medical-assistance-to-the-aged programs but with the entire Nation. Under this equation, the five States receiving 88 percent of Kerr-Mills moneys, have only 32 percent of the Nation's older citizens.

On the sixth point—the frustration of congressional intent through the transfer of nearly 100,000 persons from old-age assistance to medical-assistance-to-the-aged programs—the American Medical Association editorial studiously ignores the fact that the intent of Congress in approving the Kerr-Mills law was to extend assistance to a new type of

medically indigent persons. Instead, they attack the committee report for not recommending a change in the program.

The final and most outrageous assertion in the AMA News editorial is contained in these words:

A basic conclusion of the (subcommittee) report, that low usage of medical assistance to the aged means inadequacy of medical assistance to the aged is a fallacy; low usage, by any reasonable interpretation, suggests that the vast majority of the elderly do not need aid or are receiving it through other programs.

Thus, the American Medical Association, in the final analysis—and in the face of overwhelming statistical evidence to the contrary from every conceivable reliable source—falls back upon the shopworn, discredited argument that further action on medical care for the elderly is not necessary.

To me, this confirms the judgment that the blind opposition of the American Medical Association "medicrats" to medical care for the elderly under social security has separated them from reality.

U.S. INFORMATION AGENCY POLICIES

Mr. KEATING. Mr. President, I should like to call to the attention of the Senate, an article appearing on page 50 of the New York Times by Murray Schumacher. The article describes a documentary film on President Johnson, his background and policies, which is to be distributed around the world to acquaint the people of other nations with the new President of the United States. Let me quote from a part of this story:

The film had to be cut to fit the time limit, and on one point the USIA exercised censorship.

To indicate the harmonious relationship of different faiths in the United States, there was a shot of Roman Catholic, Protestant, and Jewish clergymen. The rabbi was ordered deleted because of possible Arab objections.

Mr. President, this kind of censorship would be absolutely repugnant to the people of the United States. Kowtowing to Arab prejudice in an official public document to be circulated around the world would be an incredible act of appeasement. Designed to indicate the harmonious relationships of different faiths, it would instead be an advertisement to the world of religious prejudice and discrimination.

Mr. President, I have checked this matter with the U.S. Information Agency. I am informed that the story is not accurate. I am informed that there was consideration of opening the film on President Johnson with a sequence showing a priest, a minister, and a rabbi in their respective places of worship, but that for a number of reasons this opening was discarded and a wholly different approach used in which neither priest, minister, nor rabbi appear.

I am informed, however, that USIA has certain general policies with regard to scenes which they feel would offend the viewing audience in different countries. For instance, they give as an illustration the fact that care is taken

never to show films of cattle slaughter in India, since such activities are contrary to the Hindu religion. Whether it is equally right to delete all pictures or references to rabbis or the Jewish religion on any films shown in the Arab world is an entirely different question which deserves most serious consideration and review to insure that a distorted and discriminatory picture of American life and customs is not projected abroad. I am asking for a full written report on this incident and on general USIA policies in this field.

Let me point out, however, that USIA does not censor articles, films, or newscasts to make them more palatable to other nations. In fact, I am informed that in the civil rights march on Washington stories, views were shown of Protestant ministers, Catholic priests, and Jewish rabbis marching together. All three religious groups were referred to by name in a broadcast that went to all the world, including Arab countries.

Mr. President, the entire world has read in the last few weeks of the unfortunate incident in Great Britain where Lord Mancroft resigned from the board of an insurance company in order not to offend Arab sensibilities or lose business for the firm. This action was rightly pilloried throughout Britain and the British Government has clearly indicated that it will support British firms to the hilt in their opposition to religious and racial discrimination of the type preached by the Arab League.

Mr. President, how much more important it is for the Government of the United States to lean over backward to present a fair and unbiased picture of U.S. life and not to take actions of any sort which could be interpreted as yielding to the pressure of discrimination overseas.

Mr. JAVITS. Mr. President, I, too, have looked into the question which my distinguished colleague from New York has mentioned, dealing with the alleged censoring of a motion picture by USIA, in eliminating what was thought might antagonize Arab nations if it were shown in those nations.

I am pleased to learn that the USIA assures us that there is nothing to the story. I am glad there is not. I am very proud of the USIA. I hope very much it will be keenly sensitive to this question, as it has shown in the past that it has a capacity for discernment and respect for questions of this character as they affect our own institutions, which are so very clear upon that subject.

RELATIONS WITH ARAB STATES

Mr. JAVITS. Mr. President, the newspapers recently have raised the general question of our relationships with the Arab States.

Recently there appeared a front page article in the New York World-Telegram on the question of the effectiveness of the Arab boycott of firms which are allegedly doing business with Israel. Approximately 84 firms were mentioned. I ask unanimous consent that the article may be printed in the Record at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EIGHTY-FOUR AMERICAN FIRMS BLACKLISTED BY ARABS BUT ISRAEL IS NOT HURT BY BOYCOTT

Eighty-four American enterprises, including some of the country's leading corporations have been boycotted by one or more Arab States for trading with Israel, a World-Telegram survey showed today.

But the boycotts are not doing the Arabs any good.

And two dozen world-famous entertainers—Harry Belafonte, Helen Hayes, Eartha Kitt, Frank Sinatra, and Elizabeth Taylor among them—also are on the blacklist.

The survey, to determine the extent of Arab boycott pressures on America, was prompted by England's Lord Mancroft affair.

FORCED TO RESIGN

Lord Mancroft, a Jew and former Minister Without Portfolio in Harold Macmillan's government, was forced to resign from the board of the \$750 million Norwich Union Insurance Societies because of Arab pressure.

Norwich Union relented under sharp blasts from the British Government and public, and invited Lord Mancroft back to his position on the board. The 49-year-old peer, a World War II hero and director of enterprises which have wide business connections in Israel, refused to rejoin the board. Two other directors of the firm quit last week.

Among American companies officially boycotted by one or more of the Arab States are the Bulova Watch Co., Dow Chemical Co., Fairbanks Morse & Co., Firestone International, General Tire and Rubber Co., the cosmetics firms of Helena Rubinstein and Helene Curtis, International Business Machines, World Trade Corp., Kaiser Industries, Mack Truck Co., Pratt and Whitney Co., Revlon, Inc., and Studebaker-Packard Corp.

U. S. FIRMS REBEL

The World-Telegram survey further revealed:

American firms, in almost every instance, angrily refused to knuckle under to threats of loss of Arab business if they continued trading with Israel.

The boycott has turned out to be more bluff than reality. The Arab States' worldwide blacklisting operation has failed to weaken Israel's economy to any appreciable degree.

Many American and European companies which at first bowed to Arab demands have reversed their policies and have publicly announced they would disregard the boycott.

The economic effect on American industries, businesses and maritime and entertainment interests which held firm against boycott threats has been virtually nil. When Conrad Hilton, for example, received an Arab pitch against going ahead with plans for his Tel Aviv Hilton, he told the Boycott Office sharply to mind its own business—that Israel did not protest when he erected the Nile Hilton in Cairo.

Principal holdouts against the trend toward defying the boycott are major oil companies highly active in Arab lands and shipping interests whose operations to a large extent are with Arab countries.

That the boycott is more bluff than reality will be confirmed within a few weeks in an official documentation by the Anti-Defamation League of B'nai B'rith, which keeps close tabs on blacklisting of American companies by members of the Arab League.

ISRAEL UNAFFECTED

The ADL's Bulletin will state: "Despite threats, blacklists, propaganda and even subterfuge, it (the boycott) has failed to weaken Israel's economy."

Loopholes have developed in the operation, which is directed by a central Arab Boycott Office in Damascus, Syria. The office, a non-governmental agency, is responsible to the Economic Council of the Arab League. Its aim is to undermine Israel's potential by ruining its economy. The boycotts generally take the form of barring the products of blacklisted companies and forbidding them to set up plants in Arab nations.

Several American firms said when interviewed that while they still are, or had been, boycotted by one or more of the Arab States, they have gone right on doing business with other Arab lands which apparently blink at the restrictions.

Breaches also have developed from within the boycott wall. Recent reports from Jerusalem indicated that Lebanon was growing cool to the boycott. Jerusalem said economic sources in Beirut contended the operation was hurting Lebanon and other Arab States more than it was damaging Israel.

RENAULT CHANGED PLAN

Renault Automobile Co. of France, which yielded in 1959 and bowed out of a plan to deliver parts for assembly in Haifa, has had second thoughts and decided to manufacture in Israel.

Der Spiegel, the German publication, reported several weeks ago that a United Arab Republic proposal to let Renault build a plant in Alexandria, Egypt, never came off. The concession went instead to the Italian Fiat concern.

In addition, Renault's bowing out of Israel apparently angered so many Americans that in 1960 the company sold 60,000 fewer cars here than in 1959, Der Spiegel said. The United States is Renault's biggest foreign market.

The boycott suffered another blow last Wednesday when Republic Steel Corp., third largest steel manufacturer in the United States, entered into partnership with the United Saran Plastic Corp., Ltd., an Israel company, to make metal products.

The American Express Co. which had suspended operations in Israel, has resumed work in the country, and Brown & Williamson, an American-British tobacco company, has resumed sales there.

The American Machine & Foundry Corp. of New York rejected an Arab demand that it decline to service the atomic reactor the company had helped Israel build. Yet AMF was removed from the Arab boycott list after being on it for 14 months.

Howard James, head of Scherr-Tumico, Minneapolis optical firm, sent a bristling reply to the boycott office's effort to dissuade him from setting up a plant in Israel.

Washington has taken an active role in many cases—including that of the AMF—in persuading companies not to give in to boycott threats.

The boycott even reached such a silly stage that firms whose wares bear the Star of David as a trademark—although many companies with no Jewish connections use such a trademark—were blacklisted.

The Jordan Government last spring lifted the ban on importing a specific brand of Swiss watches on the assurance that the makers would stop using the Star of David in their trademark.

ENTERTAINER BLACKLIST

As for famous Hollywood stars: The late Marilyn Monroe was blacklisted; Jordan banned all records of Belafonte; the Arab League shut out all Sinatra movies and records.

Other entertainers officially boycotted are Eddie Cantor, Sammy Davis, Jr., Eddie Fisher, Juliette Greco, Jascha Heifetz, Danny Kaye, Jerry Lewis, Yehudi Menuhin, Arthur Miller, Sal Mineo, Edward G. Robinson, Esther Williams, and Joanne Woodward.

Thirteen American vessels are boycotted. Five others have been removed from the blacklist.

LIST OF U. S. FIRMS BOYCOTTED BY ARABS

Here is the list of American enterprises officially boycotted by one or more of the Arab States:

Adams Carbide Corp.
Air Electric Corp.
American Bilrite Rubber Co.
American Latex Products Co. (California).
American Levant Machinery Corp., Construction Aggregates, Chicago.
American Palestine Trading Corp.
William Bernstein Co.
Bulova Watch Co. and its parent, Bulova Foundation.
Cal. Amer., Inc.
Chemical Construction Corp.
Clinto Institute, Los Angeles.
Clinton Co., Los Angeles.
Continental Import & Export Corp.
Dawes Laboratories, Inc.
Dayton Rubber Co.
Dow Chemical Co.
Elco Corp.
Elliott Import Corp.
Eliot Knitwear Corp.
Emerson Radio & Phonograph Co.
Empire Brushes, Inc.
Fairbanks Morse & Co.
Fairbanks Whitney.
Firestone International.
General Shoe Corp.
General Tire & Rubber Co.
George Ehart Co.
Glazier Corp.
Garcia & Dias, Inc. (maritime firm).
Hassenfeld Bros. Pencils Co.
Helena Rubenstein, Inc.
Helene Curtis International.
Herman Hollander, Inc.
Home Insurance Co.
Hudson Pulp & Paper Co.
Imperial Chemical Co.
Import From Israel Co. (New York).
International Business Machines World Trade Corp.
International Latex Co.
Israel Coin Distributor Corp.
Israel Philatelic Agency in America, Inc.
Jacques Torczyner & Co.
Kaiser Industries (automobiles only).
Eli Lilly International Corp.
The Lock Joint Pipe Co.
M. Lowenstein & Son, Inc.
Mack Truck Co.
Herbert Marmoreck & Son Co.
Merck, Sharp & Dohme.
Merritt-Chapman & Scott Corp.
Miles Laboratories.
Minkus Publications, Inc. (New York).
Mitenberg & Samton, Inc.
Moller Dee Textile Corp.
National Plastics Co.
P. E. C. Diamond Corp.
Philco.
Philipp Bros.
Pilot Radio Corp.
The Plough Sale Corp.
Pratt & Whitney Co. (Conn.).
Ragasin Industries & Beaunit Mills, Inc.
Revlon, Inc.
Re-Search Inc.
Rothley, Inc.
Schering Corp.
Shell Chemical Co.
Sinclair & Valentine, Inc.
Sol Manufacturing Co. (Jamaica, N.Y.).
Sonneborn Associates Petroleum Corp.
O. L. Sonneborn & Sons.
Fred Stern Co., New York City.
Studebaker-Packard Corp.
Tarco Pharmaceutical Co.
Tel-Aviv Importing Corp.
Topps Chewing Gum.
Union Bagcamp Paper Co.
United States Near East Laboratories.

United States Wall Board Machinery Co.
Vintage Wines, Inc.
Vulcan-Hart Corp.
Wasserstein Bros.
Willys-Overland Corp.
Winthrop Products, Inc.

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article entitled "Israel Holds Arab Boycott Has Failed in Object of Enlisting World's Aid," published in this morning's New York Times.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ISRAEL HOLDS ARAB BOYCOTT HAS FAILED IN OBJECT OF ENLISTING WORLD'S AID

(By W. Granger Blair, Jr.)

JERUSALEM (Israel sector), December 14.—The Arab League boycott of Israel as an overall strategy has been a failure, although it has had some tactical successes, in the opinion of Israel officials.

The object of the boycott, it is held here, has been to associate the international community as a whole with the Arab policy of diplomatic, political, and economic hostility to Israel.

That it has been a failure at the diplomatic and political level can be measured by the fact that Israel today has diplomatic relations with 86 countries, officials observe.

They remark that only a few non-Arab countries, such as India, West Germany, Indonesia, and Pakistan, have withheld the establishment of diplomatic relations with Israel out of consideration of Arab enmity with this country. Indonesia and Pakistan are predominantly Moslem.

On the economic front, in which the League's activities are most manifest, the hope of the Arab nations was to strangle Israel as a trading nation, Israelis say.

As Abba Eban, Deputy Premier and Acting Foreign Minister, observed, "Our exports have gone from \$48 million in 1948 to more than \$600 million this year."

A further indicator of the small overall impact of the boycott on Israel's growth is the rate of foreign investment. This increased from \$35 million in 1960 to \$52 million in 1961 and \$85 million in 1962.

Nonetheless, as Mr. Eban observes, the boycott is significant as a symptom of political hostility. "It is politically and morally important to stop the boycott from succeeding in any individual case, because this can weaken our position politically," he said.

BOYCOTT RUN HAPHAZARDLY

LONDON, December 16.—Three out of every five British companies blacklisted for trading in the Arab world because of their connections in Israel had no dealings in the Arab world in the first place.

One director, blacklisted under a boycott report issued yesterday, died last February at the age of 86.

In appraising the impact of the Arab boycott of Israel on British companies, the capricious and haphazard qualities of the boycott stand out.

The damage to British companies is considered by most observers here to be slight.

What has aroused concern is the ease with which the Arabs are able to have certain demands met by British companies simply in threatening boycott action.

This was shown in the recent capitulation to Arab pressures by the Norwich Union Insurance Societies. Lord Mancroft, who sat on the big mutual company's London advisory board, was found objectionable because of his association with a known benefactor of Israel, Sir Isaac Wolfson.

The company, given the choice of Arab blacklisting or Lord Mancroft's resignation, chose to have him resign. Part of the settlement he got from the company is going toward the building of a new synagogue in Norwich.

Maurice Orbach, secretary of the Trades Advisory Council, which seeks to combat discrimination in business, said today that the embargo threat was "accepted here to an unwarranted degree."

One reason for this, he contended, is that companies are not getting sufficient guidance and help from the British Government. The council wants the Government to issue a directive against the boycott.

Yesterday, according to reports from Amman, 49 additional British companies were put on the Arab blacklist. Of these, 25 were associated with Charles Clore, a British financier whose sympathies for Israel are well known. Last year he donated \$1 million to the Weizmann Institute of Science in Israel.

The Amman announcement brings to more than 100 the number of British companies on the blacklist. In addition, 33 officers and directors of the Clore group were personally blacklisted.

Before leaving for New York by air today, Mr. Clore termed the boycott "a whole lot of bloody nonsense." He said it would not make the "slightest difference to my attitude about doing business in Israel."

UNITED STATES HELPS COMPANIES

The U.S. Government grants what amounts to de facto recognition of the Arab League boycott of American companies that do business with or in the State of Israel.

State Department officials said yesterday that the United States did not recognize the Arab boycott as valid under international law.

However, the officials acknowledged that the State Department had entered into negotiations with the Arab nations to assist American concerns that wish to be taken off the boycott list. These negotiations have been undertaken at the request of companies that assert they have no direct dealings with Israel, the officials explained.

One official said: "From a practical viewpoint, we can't prevent individual Arab countries from boycotting individual companies or products."

It is not known exactly how many U.S. concerns are on the Arab boycott list. An official of the Arab League here said the list was at the Boycott of Israel Committee's central office in Damascus, but could not be made available here.

A Jewish organization here has prepared a list of 59 American companies that are or have been on the Arab boycott list.

A spokesman for the organization said the list was constantly changing, as American concerns resisted Arab pressure or yielded.

Several companies on the list had no comment when asked if they were under the Arab boycott. The IBM World Trade Corp., whose name was included, said it had no knowledge of being on any boycott list.

Companies questioned yesterday told of many loopholes in the Arab boycott. One oil company official said that although shipments of Arab oil to Israel are strictly prohibited, Arab oil often reaches Israel through third-country brokers.

A spokesman for Trans World Airlines said his company scheduled regular flights to Tel Aviv and to Cairo, and that the airline was on good terms with the United Arab Republic and with Israel.

Mr. JAVITS. Mr. President, the article quotes British and United States sources in respect to the effort of the Arab states to boycott anybody who does

business with Israel. It is a subject with which I have lived for a long time. It deeply affects our country and its policy. Not only have we been subjected to this kind of indignity through American firms which happen to have Jews either in their ownership or management; we are now subjected to it by firms that do business with Israel, a country with which we enjoy most friendly relations. We have experienced it in the effort of many Arab countries even to bar admission to Americans of Jewish faith who serve in our Armed Forces and are assigned to military bases. That is true in connection with the Dhahran Air Base.

It raises the whole question of what ought to be the U.S. posture with respect to the continuing determination of the Arab leadership—mainly given voice by President Nasser, of the United Arab Republic, that the state of war with Israel shall continue; that war shall be made in every way upon Israel, and in every part of the world.

The United States enjoys very friendly relations with Israel. It seems to me that we have now given President Johnson a clear mandate with respect to what ought to be the posture of the United States as it is contained in the foreign aid bill amendment which the Senator from Alaska [Mr. GRUENING] and Representative FARBER, of New York, brought up in the Senate and in the other body, and which was supported by my colleague from New York [Mr. KEATING], by myself, and by other Senators on the floor of the Senate. This provision is now a part of the law. In order to be certain that it would be a part of the law, we did not amend it in any way in the Senate, but actually copper-riveted it into the bill by adopting the same language as the other body had adopted.

This amendment bars assistance to any country which is engaged in or is planning aggressive action against the United States or any other country aided under the Foreign Assistance Act. I am bold enough to say that this is a very important place from which to begin. It extends to matters which we have been discussing today and which have come to the fore. I believe it is high time that the United States began to make it clear that it will have no truck, in any way, shape, or form, by aid, by diplomatic friendship, or by tolerance, with any situation in which the fundamental rules of conduct of the civilized world are violated.

There are no actual hostilities between Israel and the Arab States. The state of armistice, to say the least, has continued over many years. There have been problems, but there is no war. The Arab activity represents an effort to continue a situation which, de facto, does not exist. It is very disturbing to the world. It crosses over normal trade and other patterns. It is time that we stopped temporizing and that the United States, at least, as the leader of the free world, should say it will not countenance any of these activities by its own aids.

I hope that the President will take seriously and literally the mandate which Congress has placed in the foreign aid bill, and will not extend aid to President Nasser and the United Arab Republic, or to any other Arab States which continue to carry on this vendetta against Israel, especially as it extends into commercial channels and the supplying of goods and services, and continues boycotts which have no standing whatever in international law, and are nothing but a harassing effort.

We participate in some way, both by aid, which I have already referred to, against which we turned our face in the foreign aid bill, and through the use of our diplomatic establishment. For example, the New York Times article states:

The U.S. Government grants what amounts to de facto recognition of the Arab League boycott of American companies that do business with or in the state of Israel.

State Department officials said yesterday that the United States did not recognize the Arab boycott as valid under international law.

However, the officials acknowledged that the State Department had entered into negotiations with the Arab nations to assist American concerns that wish to be taken off the boycott list.

The article continues in that vein. It is high time that American policy be made very clear upon that score. Let it be understood that the United States will not give any aid to any of the policies of boycott or aggression, directly or indirectly. Let it be understood that we will not be a party to such conduct, and that we will not lend the machinery of the State Department for the purpose of its continuation. We will let the Arab States stand or fall upon the basis of their ability to maintain themselves. We know very well from our experience that the boycott will not last very long or mean very much if allowed to rest upon that base.

The United States is the most powerful nation in the free world. We are the leaders of the free world. We have temporized long enough with this embarrassing situation, caused by nations which persist in living in the Middle Ages, in terms of carrying on a vendetta with the long established world nations. It is time it came to an end.

We cannot coerce or direct any Arab State to bring these vexatious, extralegal practices to an end; but we do not have to help them. We do not have to help them by aid. We do not have to help them by diplomatic activity. It is to that subject that I address my plea today. Let our new President say, "Congress has given me its clear view, not only this time, but before, that we must unite and fulfill our obligation."

Let us, therefore, halt any aid, direct or indirect, of policies which are both extra-legal, vexatious, and vindictive, in a way which is so contrary to the policy of our Nation and the Charter of the United Nations. It can be done. It has not been done. Amendment after amendment has been offered in this field. The junior Senator from New

York [Mr. KEATING] and the senior Senator from Illinois [Mr. DOUGLAS] together sponsored an amendment. It did no real good. The senior Senator from Oregon [Mr. MORSE] and I together sponsored an amendment. It did no real good. The Senator from Alaska [Mr. GRUENING] and Representative FARBER sponsored an amendment, in which other Senators and I joined, and it is now the law.

It is high time that some good was done. The issue is clear. The way the situation has been handled has not been good. Nasser has sent his troops into the Yemen and is maintaining hostilities there in violation of his pledge to the United States to withdraw his troops. That was his thanks to us for bailing him out of his trouble with the Suez Canal, when we provided hundreds of thousands of dollars of aid. That was the thanks Nasser gave us for all of our assistance to him.

Let us try another policy, a policy of not countenancing this situation any further. We cannot direct it; we cannot coerce its end; but we can assist by not giving aid or comfort.

I hope very much that the old lesson is the lesson we shall draw from a continuation of the pressure that is put upon us and that will continue for a long time. It has been impossible to get the corporations of the Arab States in the resettlement of Palestine refugees. I say this unilaterally, but I am convinced that in the context of a peace settlement Israel will take back a fair number and will make compensation for their property, where it is disturbed, for those who remain or go to other places. But all this must be included in the ethics of the overall peace settlement.

All these matters have a connection. It is high time for the United States to take a much stronger attitude in the Middle East than it has ever taken before, and decide that it will no longer countenance a temporizing with this situation in any way. The situation has not become better; it has grown worse. There must be an effort to make it better. It is high time for the United States to adopt a policy consistent with the constantly reiterated congressional mandate, a point of view reiterated in the foreign aid bill, which I hope, at long last, the President and the administration will take seriously to heart and act upon it as Congress intended it should.

CLOSING OF MILITARY INSTALLATIONS

Mr. JAVITS. Mr. President, I have not spoken previously on the floor of the Senate with respect to the administration's plans to close or curtail the operations of 26 military installations in 14 States. The heaviest impact of these closings will fall upon the State of New York, because seven such installations are located in our State.

One must be careful about how he approaches an action of this kind, which is invoked in the name of economy. The President has said he needs this economy

in order to hold the budget to the \$100 billion level. However, we have not yet learned whether he will or will not.

There are two basic principles that I believe we must observe. The first one is that there cannot be any naked opposition to the curtailment of inefficiency or obsolete military installations which do not contribute to our national defense posture. I state that as a fundamental proposition.

I do not believe any Member of Congress would wish to be in that position, because otherwise our entire Military Establishment would be inflexible and never would be subject to change or to economy, and I believe all Senators agree that this sector of Federal expenditures can stand economy.

On the other hand, we clearly have a right to ask whether or not it is true that a particular installation contributes to our national defense posture. In short, there is nothing infallible about the Department of Defense. I am sure it proceeds in good faith, and tries to use its best judgment; but it is not infallible.

Second—and equally important—we have a right to question whether any overall effective economies will really be obtained. My colleague [Mr. KEATING] has argued this point most eloquently—namely, that the Department of Defense must not consider solely its own possible savings, because that does not represent the total economy to the Government. Instead, the Department must determine whether, on total balance, taking into account all the activities of the Government, the proposed closings or moves will or will not result in economy. In short, when the Department of Defense closes an installation, it closes it in behalf of the entire Government of the United States, not merely on behalf of the Department of Defense. Therefore, the right hand must know what the left hand is doing. Otherwise economies will be illusory.

In the State of New York, there is considerable controversy about Griffiss Air Force Base in Rome, where it is proposed to eliminate and transfer to other places the functions of the Rome Air Materiel Area. It is also proposed to transfer certain important activities from the Schenectady Army Depot to other places.

In the case of the Schenectady proposal, it is our deep conviction—and we intend to continue to argue it with all the strength we possess—that no meaningful overall economy will result, but that, on the contrary, a loss will result.

We believe the same is true in regard to the Griffiss Airbase proposal, as regards the contemplated transfer of the activities of the Rome Air Materiel Area installation there. We believe a very strong case is to be made in opposition to the proposed closing and transfer of the activities at the Griffiss Air Force Base. We believe the proposed transfer would not be in the interest of our national defense system, but, on the contrary, would be opposed to it.

This is a very serious matter. I have personal information about that base.

I have been there a number of times, and have been briefed time and again as to the activities there, and have been able to see at firsthand the contributions this installation makes to the support of the Air Force ground-based communications and electronics systems throughout the world. I have been advised that the Air Materiel Area establishment at Rome procures, stores, and transports virtually all the component parts of 22 ground-based communications and electronics systems now used by the Air Force, including the major defense lines, BMEWS, DEW line, and SAGE as they affect the protection and security of the United States, and that a material disruption of the logistical support for these systems inevitably would result from the dispersal of these functions to other areas in the United States.

Mr. President, inasmuch as we feel very deeply about this matter, I hope the Preparedness Subcommittee of the Armed Services Committee will feel that this is a subject which it should examine, for this is one of the major grounds on which we have a right to question the findings and determination by the Department of Defense.

I also wish to express my support of the proposed legislation—which was introduced a few days ago—to require a study to be made by the Area Redevelopment Administration of the impact of such action by the Department of Defense, before the actual closing of any of these bases. This is on the basis of the question of the overall economy involved, as well as whether their closing will contribute to or prejudice our national defense posture.

Mr. President, I have made these remarks because I think it very important that our position be clearly understood publicly. This is not a matter of attempting to prevent an economy, for it is our duty to promote economy. This is not a matter of keeping open inefficient or obsolete defense establishments, for it is our duty to aid the Defense Department in closing them.

But when we encounter a direct challenge which relates to the basic and fundamental grounds for these decisions, which may or may not be justified, and when we believe that the Department of Defense is wrong, it is also our duty to challenge the decisions. That does not mean parochialism or an attempt to keep open an establishment which should be closed. If the closing of such an establishment is the only way in which the paramount national objective can be sustained consistent with our national defense posture, we should not question the decision. But certainly we have a right to question it on proper grounds. We have a right to know the full justification for the Department of Defense's proposed actions.

I feel that by being a party to that questioning, I am doing my duty in regard to the Defense Establishment of the Nation. I say here and now that if the evidence reasonably demonstrates that these installations are actually inefficient or obsolete and do not contribute to our

national defense posture and if it is found that the closing of these establishments or their transfer will represent, in the overall view, more of an economy than an expenditure to the Federal Government, then I shall have to—like every other Senator who is doing his duty—concur in the decision of the Department of Defense. However, the record and the facts do not demonstrate that that is the case. So I think this proposal is open to serious challenge. We have not even received the very basic figures in regard to the alleged saving involved; and one would certainly think the Department of Defense would have ascertained them, and revealed them first.

Therefore, Mr. President, both because of the cost factor and because of the national defense factor, I believe it is our duty to determine that the Defense Department must be required to present its proof. In view of the fact that the interests of the Nation's security and its taxpayers are seriously affected by the activities of the Department of Defense, nationally and with respect to the State of New York, I feel that the matter of requiring the Defense Department to submit its proof is a duty equal to any other duty of a Senator, in connection with this situation.

Mr. President, I yield the floor.

PROPOSED CLOSING OF GOVERNMENTAL NAVAL SHIPYARDS— PERSONAL STATEMENT BY SENATOR SMITH

Mrs. SMITH. Mr. President, this morning an attack was made by the junior Senator from New Hampshire on my personal integrity. I shall not dignify the low level of his attack with a reply. As for the reliability and authoritative character of my source of information concerning the closings of government naval shipyards in the future, I am quite willing to identify that source to the Secretary of Defense—should he so request—and let him judge for himself as to the reliability and authority of that source and whether he wishes to disclose publicly the identity of my source.

It is common courtesy and long-established senatorial practice for a Senator to notify another Senator in advance of such personal attack. It is interesting that the junior Senator from New Hampshire did not do so.

He is entitled to his personal opinion about me. I am gratified that there are those who do not share his opinion. An example is an editorial, which I now ask unanimous consent to have printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Nation, Apr. 15, 1961, vol. 192, No. 15, pp. 314 and 315]

THE LADY FROM MAINE

Many a citizen in many a State must wish he were a resident of Maine, so that he could be represented in the Senate of the United States by MARGARET CHASE SMITH. Many a Democrat would be glad to vote for Mrs.

SMITH, a Republican, and no doubt many a Maine Democrat does so. Her reputation among her colleagues is high, and with good reason. When a majority of Senators cowered before Joe McCarthy, she was one of the group that spoke out against him. She has never lacked either good sense or courage. But now she has done something that is nearly unprecedented in either branch of the Congress. On March 30, the Department of the Air Force notified Senator SMITH that it had decided to close the Snark missile base at Presque Isle, Maine. This would normally have been the signal for the aggrieved Legislator to rise in the Chamber, rend his garments, throw ashes on his hair and demand that the order be rescinded so that the survival of the United States would not be jeopardized and, survival aside, his faithful constituents would not be deprived of their livelihood. In this case, Mrs. SMITH rose indeed, but what she said was, "The far easier course for me to pursue politically would be to demand that the now outmoded Snark program be continued, so that the Presque Isle Airbase (could) be kept operating, to aid the economy of the area. * * * But in all good conscience I cannot do this, for this would simply be playing politics with our national security, our national defense, and our taxpayer's dollar. It would be submitting to the economic philosophy that our National Defense Establishment and our national security program must be operated primarily for the local economy." Senators MANSFIELD, MORSE, and KUCHEL were moved to commend Senator SMITH from the floor. Now it remains only for more Senators and Representatives to follow Mrs. SMITH's example.

ADJOURNMENT

Mr. SMATHERS. Mr. President, I move, pursuant to the order previously entered, that the Senate adjourn until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 3 o'clock and 10 minutes p.m.) the Senate adjourned, under the order previously entered, until tomorrow, Wednesday, December 18, 1963, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate December 17, 1963:

DIPLOMATIC AND FOREIGN SERVICE

Thomas C. Mann, of Texas, a Foreign Service officer of the class of career minister, to be an Assistant Secretary of State, vice Edwin M. Martin.

IN THE NAVY

Vice Adm. Hyman G. Rickover, U.S. Navy, to be placed on the retired list in the grade of vice admiral under the provisions of title 10, United States Code, section 5233.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 17, 1963:

DIPLOMATIC AND FOREIGN SERVICE

The nominations beginning Robert J. Francis, of Tennessee, to be a Foreign Service officer of class 1, consul general, and secretary in the diplomatic service of the United States of America, and ending Charles B. Sebastian, of the District of Columbia, Foreign Service Staff officer, to be a consul of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 10, 1963.